TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]306

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THOMAS F. DOYLE ET AL., PLAINTIFFS IN ERROR,

vs.

GEORGE C. ATWELL, ACTING CHIEF OF POLICE OF THE CITY OF MOUNT VERNON, AND PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED MARCH 17, 1922.

(28,770)

(28,770)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 815.

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* THOMAS F. DOYLE ET AL., PLAINTIFFS IN ERROR,

vs.

GEORGE C. ATWELL, ACTING CHIEF OF POLICE OF THE CITY OF MOUNT VERNON, AND PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 28, 1922.

STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the Court of Appeals held at Court of Appeals Hall, in the City of Albany, on the 22nd day of November, in the year of our Lord one thousand nine hundred and twenty one, before the Judges of said Court.

Witness the Hon. Frank H. Hiscock, Chief Judge, Presiding.

R. M. BARBER,
Clerk.

Remittitur, November 23, 1921.

THE PEOPLE, &c., ex Rel. THOMAS F. DOYLE, and Ors., Appellants,

agst.

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent; The People, &c., Respondents.

Be it remembered, that on the 26th day of July, in the year of our Lord one thousand nine hundred and twenty one, Thomas F. Doyle & ors., the appellants in this cause came here into the Court of Appeals by Arthur Garfield Hays, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department.

And The People &c., the respondent in said cause afterward appeared in said Court of Appeals by Lee Larsons Davis, District Attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said Court of Appeals having heard this cause argued by Mr. Arthur Garfield Hays, of counsel for the appellants, and by Mr. Emory R. Buckner, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore it is considered that the said order be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals, aforesaid, by it given in the premises, are by the said Court — Appeals remitted into the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and

provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, etc.

R. M. BARBER,
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office.

Albany, Nov. 23, 1921.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of
c Appeals, with the papers originally filed therein, attached thereto.

[SEAL.] R. M. BARBER,
Clerk.

d First.

Court of Appeals of the State of New York.

PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. DOYLE, William G. Chambers, and Blanche N. Hays, Relators-Appellants,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent; The People of the State of New York, Respondent.

Record on Appeal.

Arthur Garfield Hays, Attorney for Relators-Appellants, No. 43 Exchange Place, New York City.

Lee Parsons Davis, District Attorney of Westchester County, Attorney for Respondent, The People of the State of New York, White Plains, N. Y.

Filed Mar. 8, 1922.

LOUIS N. ELLRODT
Clerk.

1 New York Supreme Court, Westchester County.

PEOPLE OF THE STATE OF NEW YORK ex Rel. WILLIAM G. CHAMBERS, Relator,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. DOYLE, Relator,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

PEOPLE OF THE STATE OF NEW YORK ex Rel. BLANCHE N. HAYS, Relator,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

Notice of Appeal from Order.

SIRS:

2 Please take notice that The People hereby appeal to the Appellate Division of the Supreme Court, in and for the Second Department, from the order of Mr. Justice Martin J. Keogh, Justice of the Supreme Court of the State of New York, in the above entitled proceeding, dated the 9th day of October, 1920, and entered herein in the office of the Clerk of the County of Westchester on the 14th day of October, 1920, whereby it was held that the ordinance under which the relators were arrested is unconstitutional and void, and in which it was ordered that the relators be forthwith discharged from custody; and the said People appeal from each and every part of the said order, as well as from the whole thereof.

Dated, White Plains, N. Y., October 28, 1920.

LEE PARSONS DAVIS,
District Attorney of Westchester County.

White Plains, N. Y.

FRED W. CLARK,
Of Counsel.

To:

Louis N. Ellrodt, Esq., Clerk of the County of Westchester.
William G. Chambers, Relator.
Thomas F. Doyle, Relator.
Blanche N. Hays, Relator..
Arthur Garfield Hays, Esq., Attorney for above named relators.

3 *Order Appealed From.*

At a Special Term of the Supreme Court Held in and for the County of Westchester, at Chambers, in the City of New Rochelle, N. Y., on the 9th Day of October, 1920.

Present: Hon. Martin J. Keogh, Justice.

PEOPLE OF THE STATE OF NEW YORK ex Rel. WILLIAM G. CHAMBERS, Relator,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. DOYLE, Relator,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

PEOPLE OF THE STATE OF NEW YORK ex Rel. BLANCHE N. HAYS, Relator,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

Writs of habeas corpus having heretofore been issued out of and under the seal of this Court dated October 6, 1920, re-
4 turnable on said day before this Court, and the bodies of the relators having on said day been duly brought into Court, and the relators having been released in their own custody pending the hearing upon said writs, and the determination of this Court, now

After hearing Arthur Garfield Hays, Esq., of counsel for said relators in support of said writs, and Frederick W. Clark, Corporation Counsel of the City of Mount Vernon, in opposition thereto, and J. Henry Esser, Esq., appearing amicus curiae and due deliberation being had, after hearing and filing the respective petitions of the relators herein, and the affidavit of Thomas F. Doyle, all verified October 6, 1920, and the order directing the issuance of said writs dated and filed on said day, and said writs of habeas corpus and the information laid against said relators in the City Court of Mount Vernon upon which they are there being held, and the return to said writs of habeas corpus containing the affidavits of George C. Atwell, Michael A. Silverstein and a copy of the ordinance under which said relators were apprehended and are being held and the

answer of the relators traversing the return, and all papers, pleadings and proceedings had herein, now on motion of Arthur Garfield Hays, attorney for said relators, it is

Ordered, that the said writs of habeas corpus be, and the same hereby are sustained upon the ground that the ordinance under which said relators were apprehended and held to wit: "An ordinance of the City of Mount Vernon amending Chapter XXXI of the ordinances of said City entitled 'In relation to nuisances and the preservation of good order, by adding thereto a new section to be known as Section 21' " is unconstitutional and void.

Further ordered that said relators be forthwith discharged from custody.

M. J. KEOGH,
J. S. C.

I do not mean by this decision to question the right of the municipal authorities to regulate by reasonable ordinance the holding of meetings in the streets of the City.

M. J. KEOGH,
J. S. C.

STATE OF NEW YORK,
County of Westchester:

I have compared the preceding with the original Order filed in this office on the 14th day of Oct., 1920, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the seal of the office of the County Clerk of the County of Westchester this 14th day of Oct., 1920.

LOUIS N. ELLRODT,
County Clerk of Westchester County.

6 *Order to Show Cause (Doyle).*

New York Supreme Court, County of Westchester.

PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. DOYLE,
Relator,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent.

On reading and filing the petition of Thomas F. Doyle, verified the 6th day of Octo'er, 1920, asking for a writ of habeas corpus herein directed to the a'ove named respondent, and upon motion of Arthur Garfield Hays, Esq., attorney and of counsel for said relator, it is

Ordered, that a writ of habeas corpus issue under the hand and seal of of County Clerk of Westchester County, and allowed by the undersigned, directed to said respondent, requiring him to produce the body of Thomas F. Doyle before the undersigned Justice of the Supreme Court at a Special Term of said Supreme Court to be held in and for the County of Westchester, at my Chambers in the City of New Rochelle, New York, on the 6th day of October, 1920, at 12:30 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, to the end that the said court at said Special Term may inquire into the detention of said Thomas F.
7 Doyle, a copy of said writ to be served on the District Attorney of Westchester County at his office in the City of White Plains, N. Y., prior to the return thereof, and upon J. Henry Esser, whose appearance herein, is amicus curiæ, and upon Frederick W. Clark, Esq., Corporation Counsel, appearing in the City Court of Mount Vernon on behalf of the prosecution.

Dated, Octo. 6, '20.

M. J. KEOGH,
J. S. C.

Petition of Thomas F. Doyle, Verified October 6th, 1920, Read in Support of Motion.

To any Justice of the Supreme Court of the State of New York:

The petition of Thomas F. Doyle, respectfully shows that he is a resident of the City of Mount Vernon, Westchester County, New York, and has been such for many years and resides at No. 45 South 7th Avenue, Mount Vernon, New York.

Your petitioner further shows that he is now confined in the custody of George C. Atwell, Acting Chief of Police of the City of Mount Vernon, said confinement to the best of deponent's knowledge being upon a charge of violating an ordinance of the City of Mount Vernon in relation to public meetings. A copy of said alleged ordinance is hereto annexed, marked Exhibit "A" and a copy of the information or complaint against deponent is on file and made a part of
8 this petition. Deponent has been arraigned upon said charge, but has not pleaded.

Your petitioner further shows, that to his best knowledge and belief he is not committed or detained by virtue of any process issued by any court of the United States or any judge thereof, or by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or final order of such court, or by virtue of any execution upon such judgment or decree.

And your petitioner further shows that he is advised by his counsel Arthur Garfield Hays, Esq., whose office is situate at No. 43 Exchange Place, New York City, and verily believes, that his imprisonment as aforesaid, is illegal and that such illegality consists in this:

(1) Said ordinance marked Exhibit "A," is void, and of no force or effect, being discriminatory, arbitrary, unreasonable and violative

of the constitution of the United States and the constitution of the State of New York, and because the Common Council of the City of Mount Vernon was without power to enact the same.

(2) Notwithstanding the aforesaid an attempt was made by the Socialist Party of Mount Vernon to comply with the law of said ordinance, as appears from an affidavit of Thomas F. Doyle, verified the 6th day of October, 1920, and hereto annexed. That the manner of the attempted enforcement of the said void ordinance by the Hon. Elmer L. Kincaid, Mayor of Mount Vernon, as appears from said affidavit, was discriminatory and in direct violation of the
9 constitution of the United States, and the constitution of the State of New York, and the said Mayor had no right under the guise or pretense of withholding a permit under said ordinance, to deprive your petitioner of his constitutional right of free speech, or to deprive said Socialist Party from furthering the interests of its candidates through the medium of public speakers. That deponent's attempt to exercise his right of free speech, which apparently caused his arrest and detention, was under the auspices of the Socialist Party of Mount Vernon which had previously applied for and been refused a permit as aforesaid.

That for many years the Socialist Party has been conducting similar meetings in the same place and in the same manner in which the attempt was made to hold a meeting and which led up to and apparently caused your petitioner's arrest, and deponent avers that no disorder has resulted from said meetings. That immediately preceding deponent's effort to exercise his right of free speech, which was at or about 8:30 P. M. a meeting on the opposite corner was held by the Salvation Army; this meeting attracted a large crowd, a band was playing and people were singing and deponent avers that as far as traffic or general conditions are concerned such a meeting would affect local conditions fully as much, or more, than a meeting of a political party; such meeting was not interfered with; deponent is informed that the Salvation Army was given a permit by the
10 Mayor; for many years the Socialist Party has held meetings at the same locality without causing any public disorder; this blanket permit was for no apparent reason revoked in connection with the attempt to prevent this Socialist meeting, as set forth in the affidavit of Thomas F. Doyle, to which reference has heretofore been made.

Your deponent further shows that his arrest was illegal first, because said ordinance is illegal and violative of your petitioner's rights and secondly, because the said ordinance is enforced by the Mayor in an arbitrary manner and in an attempt to violate the rights of a political party in order to prevent it from presenting to the public the principles and candidates which it is supporting.

Wherefore, your petitioner prays a writ of habeas corpus to the end that your petitioner may be bailed and discharged from custody.

THOS. F. DOYLE.

Sworn to before me this 6th day of October, 1920.

W. C. RICHARDS,
Notary Public, West. Co., N. Y.

11 *Affidavit of Thomas F. Doyle, Verified October 6th, 1920. Read in Support of Motion.*

STATE OF NEW YORK,
County of Westchester, ss:

Thomas F. Doyle, being duly sworn, says that he resides at No. 45 South 7th Avenue, in the City of Mount Vernon, New York; that he is a duly enrolled member of the Socialist Party, a political organization duly organized and existing under the laws of the State of New York, having polled more than — votes for the office of the Governor at the last preceding election, and having duly placed in nomination candidates for all offices to be voted upon at the next general election to be held on the 2nd day of November, 1920, in accordance with the election law of the State of New York.

That in furtherance of its campaign and of the election of its candidates said Socialist Party has heretofore adopted a platform of principles, a copy of which is hereto annexed and made part hereof, and marked Exhibit "C" and intends to authorize speakers to conduct public meetings in furtherance of its platform principles and the candidacies of its several candidates.

That in accordance with the foregoing said Socialist Party in the City of Mount Vernon heretofore arranged to conduct meetings upon the streets of the City of Mount Vernon on every Saturday evening, commencing with September 25th, in so far as proper speakers were available, and for that purpose duly constituted deponent a committee of one to be in full charge of all arrangements for the conduct of said meetings.

12 That in pursuance of deponent's said authorization and instructions as such committee, and representing said Socialist Party deponent did call at the office of the Mayor of the City of Mount Vernon on September 22nd, for the purpose of obtaining a permit under a certain alleged ordinance of the City of Mount Vernon entitled, "In relation to nuisances and the preservation of good order, by adding thereto a new section to be known as Section 21," a copy of which is hereto annexed, marked Exhibit "A"; deponent asked for a permit to hold a meeting on West Second Street, near the corner of South Fourth Avenue, where said Socialist Party has for a great many years been conducting similar meetings both before and after the enactment of said ordinance; that deponent applied for said permit for a meeting to be held on the evening of September 25th; that his Honor, the Mayor, replied to deponent that he would grant no further permits for Socialist meetings while he was Mayor and that any public speaker talking under said auspices in the City of Mount Vernon would be arrested and his Honor, the Mayor, said he would have no further discussion of the subject.

Thereupon deponent left the office of his Honor, the Mayor. Immediately prior to his Honor's refusal to issue said permit he inquired of deponent who had been the speaker at the previous meeting held by said party two weeks previously thereto at the same place; deponent informed his Honor that the speaker at such meeting was Samuel Orr, who was duly elected a member of the Assembly of the State of New York at a recent special election held on September 10, 1920; said meeting on September 11, 1920, at which Assemblyman Orr made a public address was held under and by virtue of a permit theretofore issued by his Honor, Mayor Elmer L. Kincaid, but which permit was not in force on said September 22nd, and no permit of the Mayor issued in pursuance of said ordinance is now in force and effect so far as it relates to the Socialist Party, although deponent is informed and verily believes that his Honor, the Mayor, has granted other permits to other organizations seeking to conduct public meetings upon the public streets of Mount Vernon.

THOS. F. DOYLE.

Sworn to before me this 6th day of October, 1920.

W. A. RICHARDS,
Notary Public, West. Co., N. Y.

EXHIBIT "A."

An ordinance of the city of Mount Vernon, N. Y., amending Chapter XXXI of the ordinances of said city, entitled "In relation to nuisances and the preservation of good order," by adding thereto a new section to be known as Section 21, to be read as follows:

Section 21.

The gathering or assembling of persons upon the public streets of the City, the holding of public meetings upon the public streets of the city, the congregation of persons in groups or crowds upon the public streets of the city, without special permit of the Mayor, to be granted in writing, under his hand and seal, is hereby prohibited.

Any violation of the provisions of this section is declared to be a misdemeanor, punishable upon conviction by a fine of Twenty-five ($25) Dollars, or by imprisonment in the County Jail of Westchester County for twenty-five (25) days.

Dated, Mount Vernon, N. Y., Sept. 29, 1917.

EDWIN W. FISKE,
Mayor.

PETER COLLINS,
City Clerk.

Writ of Habeas Corpus (Doyle).

The People of the State of New York to George C. Atwell, Acting Chief of Police of the City of Mount Vernon:

We Command you that you have the body of Thomas F. Doyle, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatever name the said Thomas F. Doyle shall be called or charged, before the undersigned, one of the Justices of the Supreme Court of the State of New York, at a Special Term thereof to be held in and for the County of Westchester at my chambers in the City of New Rochelle, on the 6th day of October, 1920, at 12:30 o'clock in the afternoon, to do and receive what shall then and there be considered concerning the said Thomas F. Doyle and that you have then and there this writ.

Witness, Hon. Martin J. Keogh, one of the Justices of the Supreme Court of the State of New York, this 6th day of October, 1920.

LOUIS N. ELLRODT,
Clerk.

The within writ allowed this 6th day of October, 1920.

MARTIN J. KEOGH,
J. S. C.

Orders to Show Cause (Chambers).

New York Supreme Court, County of Westchester.

PEOPLE OF THE STATE OF NEW YORK ex Rel. WILLIAM G. CHAMBERS, Relator,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent.

On reading and filing the petition of William G. Chambers, verified the 6th day of October, 1920, asking for a writ of habeas corpus herein directed to the above named respondent, and upon motion of Arthur Garfield Hays, Esq., attorney and of counsel for said relator, it is

Ordered, that a writ of habeas corpus issue under the hand and seal of the County Clerk of Westchester County, and allowed by the undersigned, directed to said respondent, requiring him to produce the body of William G. Chambers before the undersigned Justice of the Supreme Court at a Special Term of said Supreme Court to be held in and for the County of Westchester at my Chambers in the City of New Rochelle, New York, on the 6th day of October, 1920, at 12:30 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, to the end that the said court at said Special

Term may inquire into the detention of said William G. Chambers, a copy of said writ to be served on the District Attorney of Westchester County at his office in the City of White Plains, N. Y., prior to the return thereof, and upon J. Henry Esser, whose appearance herein, is amicus curiae, and upon Frederick W. Clark, Esq., Corporation Counsel, appearing in the City Court of Mount Vernon on behalf of the prosecution.

Dated, Oct. 6, 1920.

M. J. KEOGH,
J. S. C.

17 *Petition of William G. Chambers, Verified October 6th, 1920, Read in Support of Motion.*

To Any Justice of the Supreme Court of the State of New York:

The petition of William G. Chambers, respectfully shows that he is a resident of the City of Mount Vernon, Westchester County, New York, and has been such for many years and resides at No. 461 South Columbus Avenue, Mount Vernon, New York.

Your petitioner further shows that he is now confined in the custody of George C. Atwell, Acting Chief of Police of the City of Mount Vernon, said confinement, to the best of deponent's knowledge, being upon a charge of violating an ordinance of the City of Mount Vernon in relation to public meetings. A copy of said alleged ordinance is hereto annexed, marked Exhibit "A" and a copy of the information or complaint against deponent is on file and made a part of this petition. Deponent has been arraigned upon said charge, but has not pleaded.

Your petitioner further shows, that to his best knowledge and belief he is not committed or detained by virtue of any process issued by any court of the United States or any judge thereof, or by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or final order of such court, or by virtue of any execution upon such judgment or decree.

And your petitioner further shows that he is advised by his counsel Arthur Garfield Hays, Esq., whose office is situate at No. 43 Exchange Place, New York City, and verily believes that
18 his imprisonment as aforesaid, is illegal and that such illegality consists in this.

(1) Said ordinance marked Exhibit "A," is void, and of no force or effect, being discriminatory, arbitrary, unreasonable and violative of the constitution of the United States and the constitution of the State of New York, and because the Common Council of the City of Mount Vernon was without power to enact the same.

(2) Notwithstanding the aforesaid an attempt was made by the Socialist Party of Mount Vernon to comply with the law of said ordinance, as appears from an affidavit of Thomas F. Doyle, verified the 6th day of October, 1920, and hereto annexed. That the manner of the attempted enforcement of the said void ordinance

by the Hon. Elmer L. Kincaid, Mayor of Mount Vernon, as appears from said affidavit, was discriminatory and in direct violation of the constitution of the United States, and the constitution of the State of New York, and the said Mayor had no right under the guise or pretense of withholding a permit under said ordinance, to deprive your petitioner of his constitutional right of free speech, or to deprive said Socialist Party from furthering the interests of its candidates through the medium of public speakers. That deponent's attempt to exercise his right of free speech, which apparently caused his arrest and detention, was under the auspices of the Socialist Party of Mount Vernon which had previously applied for and had been refused a permit as aforesaid.

19 That for many years the Socialist Party has been conducting similar meetings in the same place and in the same manner in which the attempt was made to hold a meeting and which led up to and apparently caused your petitioner's arrest, and deponent avers that no disorder has resulted from said meetings. That immediately preceding deponent's effort to exercise his right of free speech, which was at or about 8:30 p. m. a meeting on the opposite corner was held by the Salvation Army; this meeting attracted a large crowd, a band was playing and people were singing and deponent avers that as far as traffic or general conditions are concerned such a meeting would affect local conditions fully as much, or more than a meeting of a political party; such meeting was not interfered with; deponent is informed that the Salvation Army was given a permit by the Mayor; for many years the Socialist Party has held meetings at the same locality without causing any public disorder; this blanket permit was for no apparent reason revoked in connection with the attempt to prevent this Socialist meeting, as set forth in the affidavit of Thomas F. Doyle, to which reference has heretofore been made.

Your deponent further shows that his arrest was illegal first, because said ordinance is illegal and violative of your petitioner's rights and secondly, because the said ordinance is enforced by the Mayor in an arbitrary manner and in an attempt to violate

20 the rights of a political party in order to prevent it from presenting to the public the principles and candidates which it is supporting.

Wherefore, your petitioner prays a writ of habeas corpus to the end that your petitioner may be bailed and discharged from custody.

WILLIAM G. CHAMBERS.

Sworn to before me this 6th day of October, 1920.

W. A. RICHARDS,
Notary Public, West. Co., N. Y.

(Affidavit of Thomas F. Doyle verified October 6, 1920, same as ante.)

(Copy of Ordinance, same as Ante.)

Writ of Habeas Corpus (Chambers).

The People of the State of New York to George C. Atwell, Acting Chief of Police of the City of Mount Vernon:

We Commend You that you have the body of William G. Chambers, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatever name the said William G. Chambers shall be called or charged, before the undersigned, one of the Justices of the Supreme Court of the State of New York, at a Special Term thereof to be held 21 in and for the County of Westchester at my Chambers in the City of New Rochelle, on the 6th day of October, 1920, at 12:30 o'clock in the afternoon, to do and receive what shall then and there be considered concerning the said William G. Chambers and that you have then and there this writ.

Witness, Hon. Martin J. Keogh, one of the Justices of the Supreme Court of the State of New York, this 6th day of October, 1920.

[SEAL.] LOUIS N. ELLRODT,
Clerk.

The within writ allowed this 6th day of October, 1920.

M. J. KEOGH,
J. S. C.

Order to Show Cause (Hays).

New York Supreme Court, County of Westchester.

PEOPLE OF THE STATE OF NEW YORK ex Rel. BLANCHE N. HAYS, Relator,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent.

On reading and filing the petition of Blanche N. Hays, 22 verified the sixth day of October, 1920, asking for a writ of habeas corpus herein directed to the above named respondent, and upon motion of Arthur Garfield Hays, Esq., attorney and of counsel for said relator, it is

Ordered that a writ of habeas corpus issue under the hand and seal of the County Clerk of Westchester County, and allowed by the undersigned, directed to said respondent, requiring him to produce the body of Blanche N. Hays, before the undersigned Justice of the Supreme Court at a Special Term of said Supreme Court to be held in and for the County of Westchester at my Chambers in the City of New Rochelle, New York, on the 6th day of October, 1920, at 12:30 o'clock in the afternoon of that day, or as soon

thereafter as counsel can be heard, to the end that the said Court at said Special Term may inquire into the detention of said Blanche N. Hays, a copy of said writ to be served on the District Attorney of Westchester County at his office in the City of White Plains, N. Y., prior to the return thereof, and upon J. Henry Esser, whose appearance herein, amicus curiae and upon Frederick W. Clark, Esq., Corporation Counsel, appearing in the City Court of Mount Vernon, on behalf of the prosecution.

Dated, October 6th, 1920.

M. J. KEOGH,
J. S. C.

23 *Petition of Blanche N. Hays, Verified October 6th, 1920, Read in Support of Motion.*

To Any Justice of the Supreme Court of the State of New York:

The petition of Blanche N. Hays respectfully shows as follows and alleges:

I reside at No. 17 Circuit Road, New Rochelle, New York; I am not a Socialist in my political affiliations, but I am and always have been interested in the question of free speech; on October 2, 1920, I went to the City of Mount Vernon, and near the corner of 2nd Street and 4th Avenue, I arose in an automobile and said, "I have come here to find out if Mount Vernon is a free city." Prior to this time a large crowd had gathered, partly due to a meeting held by the Salvation Army on the opposite corner, and, as I am informed and verily believe, partly attracted by the threat of the Mayor that no meeting would be held under the auspices of the Socialist Party; before I arose to speak, however, the pedestrians had been disbursed, so that when I was speaking, the people on the sidewalk and the street were moving and there was no duly constituted meeting.

Your petitioner further shows that she is now confined in the custody of George C. Atwell, Acting Chief of Police of the City of Mount Vernon, said confinement, to the best of deponent's knowledge, being upon a charge of violating an ordinance of the City of Mount Vernon, in relation to public meetings. A copy of said alleged ordinance is hereto annexed, marked Exhibit "A" and a copy of the information or complaint against deponent is on file
24 and made a part of this petition. Deponent has been arraigned upon said charge, but has not pleaded.

Your petitioner further shows, that to *his* best knowledge and belief, she is not committed or detained by virtue of any process issued by any court of the United States or any judge thereof, or by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or final order of such court, or by virtue of any execution upon such judgment or decree.

And your petitioner further shows that she is advised by her counsel Arthur Garfield Hays, Esq., whose office is situate at No. 43 Exchange Place, New York City, and verily believes, that her imprisonment as aforesaid, is illegal and that such illegality consists in this.

(1) Said ordinance marked Exhibit "A," is void and of no force or effect, being discriminatory, arbitrary, unreasonable and violative of the constitution of the United States and the constitution of the State of New York, and because the Common Council of the City of Mount Vernon was without power to enact the same.

(2) Notwithstanding the aforesaid an attempt was made by the Socialist Party of Mount Vernon to comply with the law of said ordinance, as appears from an affidavit of Thomas F. Doyle, verified the 6th day of October, 1920, and hereto annexed. That the manner of the attempted enforcement of the said void ordinance by the Hon. Elmer L. Kincaid, Mayor of Mount Vernon, as appears from said affidavit, was discriminatory and in direct violation of the constitution of the United States, and the constitution of the State of New York, and the said Mayor had no right under the guise or pretense of withholding a permit under said ordinance, to deprive your petitioner of her constitutional right of free speech, or to deprive said Socialist Party from furthering the interests of its candidates through the medium of public speakers. That deponent's attempt to exercise *his* right of free speech, which apparently caused her arrest and detention, was under the auspices of the Socialist Party of Mount Vernon which had previously applied for and been refused a permit as aforesaid.

That for many years the Socialist Party has been conducting similar meetings in the same place and in the same manner in which the attempt was made to hold a meeting and which led up to and apparently caused your petitioner's arrest, and deponent avers that no disorder has resulted from said meetings. That immediately preceding deponent's effort to exercise her right of free speech, which was at or about 8:30 P. M. a meeting on the opposite corner was held by the Salvation Army; this meeting attracted a large crowd, a band was playing and people were singing and deponent avers that as far as traffic or general conditions are concerned such a meeting would affect local conditions fully as much, or more, than a meeting of a political party; such meeting was not interfered with; deponent is informed that the Salvation Army was given a permit by the Mayor; for many years the Socialist Party has held meetings at the same locality without causing any public disorder; this blanket permit was for no apparent reason revoked in connection with the attempt to prevent this Socialist meeting, as set forth in the affidavit of Thomas F. Doyle, to which reference has heretofore been made.

Your deponent further shows that her arrest was illegal first, because said ordinance is illegal and violative of your petitioner's rights and secondly, because the said ordinance is enforced by the Mayor in an arbitrary manner and in an attempt to violate the rights of a political party in order to prevent it from presenting to the public the principles and candidates which it is supporting.

Wherefore, your petitioner prays a writ of habeas corpus to the end that your petitioner may be bailed and discharged from custody.

BLANCHE N. HAYS.

Sworn to before me this 6th day of October, 1920.

W. C. RICHARDS,
Notary Public, West. Co., N. Y.

(Affidavit of Thomas F. Doyle verified October 6, 1920, same as Ante.)

(Copy of Ordinance, same as Ante.)

27 *Writ of Habeas Corpus (Hays).*

The People of the State of New York to George C. Atwell, Acting Chief of Police of the City of Mount Vernon:

We Command You that you have the body of Blanche N. Hays, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatever name the said Blanche N. Hays shall be called or charged, before the undersigned, one of the Justices of the Supreme Court of the State of New York, at a Special Term thereof to be held in and for the County of Westchester at my Chambers in the City of New Rochelle, on the 6th day of October, 1920, at 12:30 o'clock in the afternoon, to do and receive what shall then and there be considered concerning the said Blanche N. Hays and that you have then and there this writ.

Witness, Hon. Martin J. Keogh, one of the Justices of the Supreme Court of the State of New York, this 6th day of October, 1920.

[SEAL.] LOUIS N. ELLRODT,
Clerk.

The within writ allowed this 6th day of October, 1920.

M. J. KEOGH,
J. S. C.

28 *Information, Read in Opposition to Motion.*

STATE OF NEW YORK,
Westchester County,
City of Mount Vernon, ss:

Michael I. Silverstein, being duly sworn, deposes and says, that he is a policeman on the Police Force of the City of Mount Vernon, and for information, on oath, says:

That on the 2nd day of October, 1920, at the said City of Mount Vernon, in said County, one Thomas F. Doyle, one William G. Chambers, and one Blanche M. Hays did wilfully and unlawfully violate one of the Ordinances of the Common Council of the City of Mount Vernon, in relation to the preservation of good order, which said ordinance has been duly passed and adopted by said Common Council and approved by the Mayor of said City of Mount Vernon, has been duly posted and published as required by law, and has, ever since July 1, 1917, been, and now is, in full force and effect, in that

they and each of them did wilfully and unlawfully gather together and assemble and cause others to assemble upon the public streets of the City of Mount Vernon, on Fourth Avenue and Second Street, and at the corner of said streets and on the sidewalks adjacent to and on said streets and did hold and cause to be held public meetings upon said public streets of said city and did congregate there and cause the congregation of persons in groups and crowds and did do and cause the same to be done without a permit of the Mayor of said city in writing or otherwise and they did each of them violate said ordinance knowingly and wilfully.

MICHAEL I. SILVERSTEIN.

Sworn to before me this 5th day of October, 1920.

JACOB A. BERNSTEIN,
Acting City Judge of Mount Vernon.

Ordinance, Chapter XXXI of Ordinance, Section 21, Read in Opposition to Motion.

An Ordinance of the City of Mount Vernon, N. Y., amending Chapter XXXI of the Ordinances of said city, entitled "In relation to nuisances and the preservation of good order, by adding thereto a new section to be known as Section 21," to read as follows:

Section 21. The gathering or assembling of persons upon the public streets of the city, the holding of public meetings upon the public streets of the city, the congregation of persons in groups or crowds upon the public streets of the city, without special permit of the Mayor, to be granted in writing, under his hand and seal, is hereby prohibited.

Any violation of the provisions of this section is declared to be a misdemeanor, punishable upon conviction by a fine of Twenty-five ($25) Dollars, or by imprisonment in the County Jail of Westchester County for twenty-five (25) days.

Dated, Mount Vernon, N. Y., Sept. 29, 1917.

EDWIN W. FISKE,
Mayor.

PETER COLLINS,
City Clerk.

I, E. W. O'Brien, City Clerk of the City of Mount Vernon, N. Y., do hereby certify that I have compared the foregoing ordinance with the original thereof now on file in my office, and that the same is a true transcript therefrom and of the whole of said ordinance.

In witness whereof, I have hereunto set my hand and affixed the seal of said city this 8th day of October, 1929.

[SEAL.] E. W. O'BRIEN,
City Clerk.

Affidavit of George C. Atwell, Verified October 8, 1920, Read in Opposition to Motion.

New York Supreme Court, Westchester County.

PEOPLE OF THE STATE OF NEW YORK ex Rel. WILLIAM G. CHAMBERS, THOMAS F. DOYLE, and BLANCHE N. HAYS, Relators,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent.

STATE OF NEW YORK,
County of Westchester, ss:

George C. Atwell, being duly sworn, deposes and says:

31 I am now Chief of Police of the City of Mount Vernon, having been appointed as such by the Police Commissioner last Tuesday, the 5th inst.

On Saturday, October 2, 1920, the office of Chief of Police of the City of Mount Vernon was vacant and I was the duly appointed acting Chief of Police of the City of Mount Vernon and in charge of the police department at that time. On the afternoon of Saturday, October 2nd, I read in the Daily Argus of Mount Vernon a statement, and was also informed by the Police Commissioner, Honorable Charles W. Wynne, that there would be public meetings and assemblages of persons at the corner of South 4th Avenue and West 2nd Street in said city that evening. Said corners are the busiest portions of said city, as South 4th Avenue is the main and principal business street and West Second Street is also a business street, and is in the thickly congested portion of the city. When I received such information from the Police Commissioner and read it in the paper, I called Lieutenant Michael I. Silverstein and a little later Sergeant William Thistleton, and gave orders to them and instructed them that if such meetings were held that they should ask for a permit from any speaker or persons addressing the people at that point. I was well acquainted, as I am now, with that ordinance of the city entitled "In relation to nuisances and the preservation of good order," and particularly Section 21 thereof which prohibits the gathering or assembling of persons upon the public streets of this city or the holding of public meetings on said street or the congregation of persons in crowds or groups upon said streets without a special permit from the Mayor.

32 I have been a police officer of the City of Mount Vernon for over twenty-two years last past, having been an active policeman during all of that time. I know of my own knowledge that since the passage of said ordinance the congregation of persons upon the public streets of this city has not been permitted by the Police Department unless a permit had been granted by the Mayor according to the provisions of that ordinance, and on numerous occasions

such assemblages have been dispersed by the police when such a permit was not produced without discrimination except in one instance, and that is, that meetings of the Salvation Army have been permitted upon the public streets without requiring a permit, but in all other instances, no such assemblages of persons have been permitted unless such a permit has been granted.

At eight o'clock on the evening of October 2, 1920, while at police headquarters, I was informed that there was a large assemblage of persons at the corner of Fourth Avenue and Second Street. I had already sent to that place the said Lieutenant Silverstein, Sergeant Thistleton and Frank Fero, a patrolman on the force, and upon receiving information of such large gathering I sent eight more patrolmen in addition to those already sent, with instructions to keep the crowd moving. I had already instructed Lieutenant Silverstein to see that any speakers had a permit from the Mayor of the city.

The action I took on that day was not in any manner different from the action which had been taken by the Police Department theretofore in enforcing said ordinance, and was not discriminatory in any manner, and was done simply in the performance of
33 my duties as Acting Chief of Police of the City of Mount Vernon.

GEORGE C. ATWELL.

Sworn to before me this 8th day of October, 1920.

JAMES BERG,
Notary Public, Westchester Co., N. Y.

Affidavit of Michael I. Silverstein, Verified October 8, 1920, Read in Opposition to Motion.

New York Supreme Court, Westchester County.

PEOPLE OF THE STATE OF NEW YORK ex Rel. WILLIAM G. CHAMBERS, THOMAS F. DOYLE, and BLANCHE N. HAYS, Relators,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent.

STATE OF NEW YORK,
County of Westchester, ss:

Michael I. Silverstein, being duly sworn, deposes and says:

I am a lieutenant on the police force of the City of Mount Vernon. On the afternoon of Saturday, October 2, 1920, I re-
34 ceived orders from George C. Atwell, then acting Chief of Police of the City of Mount Vernon, to attend and take charge of a number of policemen who were assigned to keep order at the corner of Fourth Avenue and Second Street in said city, as it had been stated by the local press and otherwise reported that an assemblage would meet there that evening, and I was directed by the Act-

ing Chief that if no permit had been issued and an attempt should be made to hold a public assemblage and address a meeting, that I should call for a permit and if none was produced to prevent speakers from addressing the assemblage.

I am well acquainted with this ordinance and know that it has been frequently enforced and without discrimination in the City of Mount Vernon. No assemblages are permitted upon the streets of the city without a permit from the Mayor, and such has been the rule since the ordinance was passed. The place in question is the most dangerous crossing in the City of Mount Vernon, especially on Saturday evenings. From about six to eleven P. M. at that place a policeman has been assigned for the past three years to regulate traffic and assist pedestrians. I did attend on that evening at eight o'clock and when the relators attempted to address the assemblage I asked each speaker and each of said relators for a permit, and each and all of said relators said they did not have any permit, but insisted on speaking, and proceeded to speak, and when they did so contrary to my instructions I placed them under arrest for violating the ordinance in question. After they were arrested they were taken to Police Headquarters where they were held under said ordi-
35 nance and paroled to appear the following Monday morning.

MICHAEL I. SILVERSTEIN.

Sworn to before me this 8th day of October, 1920.

JAMES BERG,
Notary Public, Westchester Co., N. Y.

Traverse, Read in Support of Motion.

New York Supreme Court, County of Westchester.

Answer to Return.

PEOPLE OF THE STATE OF NEW YORK ex Rel. WILLIAM G. CHAMBERS, BLANCHE N. HAYS, and THOMAS F. DOYLE, Relators,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

The answer of William G. Chambers, Blanche N. Hays and Thomas F. Doyle, by Arthur Garfield Hays, their attorney, to the return of the writs of habeas corpus heretofore made, and
36 filed herein by the respondent, severally alleges on behalf of each relator as follows:

The said relators allege that the ordinance of the City of Mount Vernon forming a part of the return is unconstitutional and void. Said relators further aver that the discrimination alleged in the petition is not discrimination on the part of the police officers, but on the part of the Mayor of the City in issuing and withholding permits under said ordinance in a discriminatory manner.

Wherefore, your relators respectfully pray that they may be discharged from imprisonment as prayed for in said petition.

ARTHUR GARFIELD HAYS,
Attorney for Relators.

O. & P. O. Address, 43 Exchange Place, New York City.

Filed, Oct. 14, 1920.

Opinion of Justice Keogh.

I do not mean by this decision to question the right of the municipal authorities to regulate by reasonable ordinance the holding of meetings in the streets of the city.

M. J. KEOGH,
J. S. C.

Stipulation Waiving Certification of Papers on Appeal.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice of appeal, the order appealed from and all the papers used before the Court below upon the motions, and the whole thereof, now on file in the office of the Clerk of the County of Westchester.

Certification thereof pursuant to Section 1353 of the Code of Civil Procedure is hereby waived.

November 29, 1920.

LEE PARSONS DAVIS,
District Attorney of Westchester County, N. Y.,
Attorney for People of the State of New York, Appellant.
ARTHUR GARFIELD HAYS,
Attorney for Respondents.

38 *Notice of Appeal to Court of Appeals.*

Supreme Court, State of New York.

PEOPLE OF THE STATE OF NEW YORK ex Rel. WILLIAM G. CHAMBERS, Appellants,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. DOYLE, Appellants,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

PEOPLE OF THE STATE OF NEW YORK ex Rel. BLANCHE N. HAYS, Appellants,

against

GEORGE C. ATWELL, Chief of Police of the City of Mount Vernon, Respondent.

39 Please take notice that the above named relators hereby appeal to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court, Second Department, dated the 3rd day of June, 1921, reversing the order of Mr. Justice Martin J. Keogh, Justice of the Supreme Court of the State of New York, in the above entitled proceeding, dated the 9th day of October, 1920, and whereby it was held by said Appellate Division that the ordinance under which the relators were arrested is constitutional and valid and in which it was ordered that the writs of habeas corpus issued October 6, 1920, be dismissed and the said relators appeal from each and every part of said order as well as from the whole thereof.

Dated, New York, June 8th, 1921.

HAYS, & WADHAMS,
Attorneys for Appellants.

Office and P. O. Address, 43 Exchange Place, New York, N. Y.

To

Lee Parsons Davis, Esq., District Attorney of Westchester County
Root, Clark, Buckner & Howland, Esqs., 31 Nassau Street, New York, N. Y.

40 *Order of Reversal on Appeal from Order.*

At a Term of the Appellate Division of the Supreme Court Held in and for the Second Judicial Department, at the Borough of Brooklyn, on the 3rd Day of June, 1921.

Present:

Hon. Abel E. Blackmar, Presiding Justice.
" Isaac N. Mills,
" Adelbert P. Rich,
" Harrington Putnam,
" Walter H. Jaycox,
Justices.

PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. DOYLE, et al., Respondents,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent; The People of the State of New York, Appellants.

The above named The People of the State of New York, the appellants in this proceeding, having appealed to the Appellate Division of the Supreme Court from an order of the Supreme Court entered in the office of the Clerk of the County of Westchester on the 14th day of October, 1920, sustaining Writs of Habeas Corpus herein etc., and the said appeal having been argued by Mr. Emory R. Buckner, of counsel for the appellants and by Mr. Arthur G. Hays, of counsel for the respondents, and due deliberation having been had thereon.

It is hereby ordered that the order so appealed from be and the same is hereby reversed and Writs of Habeas Corpus dismissed with Ten Dollars ($10) costs and disbursements. Opinion by Putnam, J. Blackmar, P. J., Rich and Jaycox, J. J., concur; Mills, J., not voting.

Enter,

ABEL E. BLACKMAR,
Presiding Justice.

42 *Opinion of Appellate Division.*

Supreme Court, Appellate Division, Second Judicial Department.

Present—Blackmar, P. J., Mills, Rich, Putnam, Jaycox, J. J.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS T. DOYLE et al., Respondents,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent; The People of the State of New York, Appellants.

Appeal by the People of the State of New York from an order of the Special Term, entered in the office of the Clerk of Westchester County on October 14, 1920, which discharged the relators from custody. The several relators had been arrested by the Mount Vernon police in addressing a popular assemblage at the corner of 4th Avenue and 2nd Street in Mount Vernon, on Saturday evening, October 2nd, 1920, without any permit from the Mayor. The three writs were heard together, resulting in one consolidated order, and a single appeal.

43 The charter of Mount Vernon (Laws 1892, chap. 182, amended by Laws 1896, chap. 692) empowers the common council (§166) "To prohibit the gathering or assembling of persons upon the public streets of said city or congregating upon the corners of the streets thereof and to authorize the police officers of said city to disperse all such gatherings or assemblages of persons, and upon the refusal of persons so congregated or assembled to disperse when commanded so to do by a duly appointed police officer, under regulations to be prescribed by the board of police commissioners such police officer may make summary arrests of any person or persons so refusing, and take him or them forthwith before the city judge of said city, to be by him tried as disorderly persons and punished as such, and all such persons are hereby declared to be disorderly persons."

Accordingly the common council passed this ordinance:

"Section 21. The gathering or assembling of persons upon the public streets of the city, the holding of public meetings upon the public streets of the city, the congregation of persons in groups or crowds upon the public streets of the city, without special permit of the Mayor, to be granted in writing, under his hand and seal, is hereby prohibited. Any violation of the provisions of this section is declared to be a misdemeanor, punishable upon conviction by a fine of Twenty-five ($25) Dollars, or by imprisonment in the County Jail of Westchester County, for twenty-five days."

The affidavit of one of the relators, Mr. Thomas F. Doyle, shows that the Socialist Party had arranged for outdoor meetings in Mount Vernon. That such a meeting had been held at this place two weeks before. That on September 22d, 1920, when relator applied to the Mayor for a meeting permit at this locality, the Mayor had stated "that he would grant no further permits for Socialist meetings while he was Mayor and that any public speaker talking under said auspices in the City of Mount Vernon would be arrested."

Nevertheless the people gathered at this place, and as the speakers admitted that they had no permit, and, against the officer's warning, insisted on speaking, their arrest followed. At the hearing under the writs of habeas corpus it was maintained that this ordinance was unconstitutional, also that permits were granted and withheld in a discriminatory manner. Accordingly the learned Justice sustained the writs and discharged the relators.

Emory R. Buckner (Lee Parsons Davis, District Attorney, Frederick W. Clark, Corporation Counsel, Elihu Root, Jr., and Robert P. Patterson with him on the brief), for the appellants.

Arthur Garfield Hays, for the respondents.

PUTNAM, *J.*:

The legislature had empowered the common council of Mount Vernon to enact ordinances regulating the use of public streets for holding meetings; and the ordinance clearly came within the terms of the charter. Hence public speaking upon the streets was only available after such leave. Without any permit from the Mayor, and against his refusal thereof, a meeting could not be lawfully held. The circumstances that at the opposite street corner the Salvation Army held a meeting that same night did not show an unjustifiable discrimination. The power to grant or withhold such permits carries with it the duty to consider public convenience and to pay regard to the liability of undue congestion, disturbance or disorder so as to interfere with the public rights to pass and repass.

Withholding permits for speaking in streets or parks, therefore, does not deny the right of free speech. (City of Buffalo v. Till, 192 App. Div. 99; People v. Pierce, 85 App. Div. 125; Davis v. Massachusetts, 167 U. S. 43; 12 Corpus Juris, p. 954, §479.) It follows that these relators, in mistaken assertion of their supposed rights, were actually breaking a valid ordinance; so that in its enforcement an arrest was in the lawful exercise of the police power. Even if discrimination against a political party were suspected, those who felt discriminated against could not take the law into their own hands, and, by such assemblage, defy this city ordinance. If a permit be improperly withheld, its issuance may be compelled through mandamus.

Hence the order should be reversed, and the writs of habeas corpus dismissed, with $10 costs and disbursements.

46–48 *Stipulation Waiving Certification of Papers on Appeal.*

Pursuant to Section 3301 of the Code of Civil Procedure it is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice of appeal, the order appealed from, the opinion of the Court and all the papers used before the Court below upon the motions, and the whole thereof now on file in the office of the Clerk of the County of Westchester.

Certification thereof pursuant to Section 1353 of the Code of Civil Procedure is hereby waived.

July —, 1921.

ARTHUR GARFIELD HAYS,
Attorney for Appellants.
LEE PARSONS DAVIS,
District Attorney of Westchester County,
N. Y., Attorney for People of the
State of New York, Respondent.

49 2.

Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. DOYLE, William G. Chambers, and Blanche M. Hays, Plaintiffs-in-error.

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Defendants-in-error.

Now come Thomas F. Doyle, William G. Chambers and Blanche M. Hays, the above named plaintiffs-in-error, by their attorney Arthur Garfield Hays, and complain and allege that they are all citizens of the United States of America. That this proceeding was brought in the New York Supreme Court, for the County of Westchester, for the issuance of writs of habeas corpus to discharge from custody the petitioners herein. An order was entered at the special term of said court granting writs of habeas corpus to said petitioners, and declaring the said ordinance unconstitutional and void. An appeal was thereupon taken from the said order to the Appellate Division, Second Department, of the State of New York, which on June 3rd, 1921, reversed the order of the Special Term of the Supreme Court and dismissed the said writs of habeas corpus. Thereafter your petitioners appealed to the Court of Appeals of the State of New York. Thereupon on the 22nd day of November, 1921, final judgment was rendered against your petitioners by the Court of Appeals of the State of New York, that being the highest court of law or equity in the said State of New York, wherein it was adjudged

that the provisions of Chapter XXXI of Ordinances of the
50 City of Mt. Vernon, Section 21, amending Chapter XXXI of
the Ordinances of said City passed pursuant to the Charter of
the City of Mt. Vernon (Laws of 1892, Chap. 182, Section 166, sub.
div. 5, as amended by Laws of 1896, Chap. 692) which prohibited
and made unlawful on and after September 19, 1917, any gathering
or assembling of persons upon the public streets of the City, the
holding of public meetings upon the public streets of the City, or the
congregation of persons in groups or crowds upon the public streets
of the City, without special permit from the Mayor to be granted in
writing under his hand and seal, and the provisions of the charter
granted to the City of Mt. Vernon giving the Common Council of
said City full power to prohibit the gathering or assembling of per-
sons upon the public streets of the City, are not in conflict with the
provisions of Section 1 of the Fourteenth Amendment to the Federal
Constitution in that the provisions of said Act did not deprive certain
citizens of the United States and of the State of New York of rights,
privileges or immunities secured to other citizens of the United
States and of the said State, nor of liberty without due process of
law, nor the equal protection of the law, all of which appears in the
record, opinion and final judgment of the said Court of Appeals af-
firming the order of the Appellate Division discharging the writs of
habeas corpus and which will more in detail appear from the As-
signments of Error filed with this petition, whereby manifest error
has happened to the great damage of your petitioners.

The said Court of Appeals adjudged the order of the Appellate Division so appealed from be affirmed and directed that the proceedings in this cause be remitted to the Supreme Court of the State of New York, and the judges thereof, there to be proceeded *from* according to law. The record of the Court of Appeals and the remittitur from said Court were duly filed with the Clerk of said Supreme Court of the State of New York for the County of Westchester.

Wherefore your petitioners pray for the allowance of a
51 & 52 Writ of Error from the Supreme Court of the United States
to the Supreme Court of the State of New York and the judges thereof, to the end that the record in said matter may be removed into the Supreme Court of the United States for the correction of the errors and a reversal of the judgment so complained of and for the discharge of your petitioners; that a transcript of the record and proceedings in this cause duly authenticated be sent to the Supreme Court of the United States; that the amount of the security which the petitioners shall give and furnish on said writ of error may be fixed, and that upon the giving of such security all further proceedings in the Supreme Court of the State of New York be suspended and stayed until the determination of said Writ of Error; and your petitioners will ever pray.

THOMAS F. DOYLE,
WILLIAM G. CHAMBERS,
BLANCHE M. HAYS, *Petitioners.*
By ARTHUR GARFIELD HAYS,
Their Attorney.

Filed Mar. 8, 1922.

[Seal Westchester County.]

LOUIS N. ELLRODT,
Clerk.

53 [Endorsed:] Court of Appeals of the State of New York. The People of the State of New York, ex rel. Thomas F. Doyle, William G. Chambers and Blanche M. Hays, Plaintiffs-in-error, against George C. Atwell, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Defendants-in-error. Copy. Petition for Writ of Error. Writ of Error allowed upon the execution of a bond by the petitioners in the sum of $500, said bond when approved to act as a supersedeas. Dated Jan. 31, 1922. Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York. Filed Mar. 8, 1922. Louis N. Ellrodt, Clerk, County of Westchester, State of New York. Arthur Garfield Hays, Attorney for Plaintiffs-in-error. Office & P. O. Address: 43 Exchange Place, Borough of Manhattan, City of New York.

54 3.

Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. Doyle, William G. Chambers, and Blanche M. Hays, Plaintiffs-in-error,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Defendants-in-error.

Now come the said plaintiffs-in-error and respectfully submit that in the record, proceedings and decision of the Court of Appeals of the State of New York in the above entitled matter, there is manifest error in this, to wit,

First. The Court of Appeals of the State of New York erred in holding that the provisions of Chapter XXXI of Ordinances of the City of Mt. Vernon, Section 21, amending Chapter XXXI of Ordinances of said City, passed pursuant to the Charter of the City of Mt. Vernon (Laws of 1892, Chap. 182, Section 166, sub-division 5, as amended by Laws of 1896, Chap. 692), and provisions of the said charter giving the Common Council of said City full power to prohibit the gathering or assembling of persons upon the public streets of the City, are not in conflict with or in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States for that the State of New York by and through the provisions of said ordinance of the City of Mt. Vernon assumes and seeks (1)

to deprive the plaintiffs-in-error and certain other citizens
55 of the United States and of the State of New York of rights, privileges and immunities secured to other citizens of the United States and of the said State; (2) to deprive the paintiffs-in-error and other citizens of the United States of liberty without due process of law; (3) to deprive and to deny to the plaintiffs-in-error and certain other citizens and persons within the jurisdiction of the state of New York the equal protection of the law.

Second. The Court of Appeals of the State of New York erred in holding that by the provisions of said ordinance of the City of Mt. Vernon leaving to the Mayor the sole and absolute power and discretion to issue permits to speak upon the public streets, and the provisions of the Charter granted to the City of Mt. Vernon by the State of New York, the plaintiffs-in-error were and are not deprived of rights, privileges and immunities secured to other citizens of the United States and of the State of New York by the Federal Constitution and laws of the United States.

Third. The Court of Appeals of the State of New York erred in holding that by the provisions of said Ordinance of the City of Mt. Vernon and by the provisions of the Charter granted the City of Mt. Vernon by the State of New York, the plaintiffs-in-error were and are not deprived of liberty without due process of law.

Fourth. The Court of Appeals of the State of New York erred in holding that the provisions of said ordinance of the City of Mt. Vernon and the provisions of the Charter of said City do not deny to the plaintiffs-in-error the equal protection of the law.

Fifth. The Court of Appeals of the State of New York erred in holding that the said ordinance of the City of Mt. Vernon is within the police powers of the said City of Mt. Vernon or of the State of New York.

56 Sixth. The Court of Appeals of the State of New York erred in holding the provisions of said charter giving the common council full power to prohibit the gathering or assembling of persons upon the public streets of said city or the holding of public meetings upon the public streets of the city without special permit of the Mayor to be within the police powers of the State of New York or the City of Mt. Vernon.

Seventh. The Court of Appeals of the State of New York erred in holding the provisions of said ordinance requiring plaintiffs-in-error to take out a permit not to be an abridgement of the unalienable and constitutional Right of plaintiffs-in-error to speak freely or assemble without interference by the State or City or by any authority acting under the State or City.

Eighth. The Court of Appeals of the State of New York erred in holding that the provisions of said ordinance and the provisions of

the Charter granted the City of Mt. Vernon by the State of New York do not grant special and exclusive privileges to certain citizens which it denies to the plaintiffs-in-error and to other citizens of the United States.

Ninth. The Court of Appeals of the State of New York erred in holding the provisions of said ordinance leaving to the Mayor the sole and exclusive power and discretion to issue permits and the subsequent arbitrary refusal of the Mayor to grant permits to the plaintiffs-in-error do not deprive the plaintiffs-in-error of liberty without due process of law and do not deny to the plaintiffs-in-error the equal protection of the law and do not deprive the plaintiffs-in-error of rights, privileges and immunities secured to other citizens of the United States and of the State of New York and in not
57 & 58 holding the said ordinance therefore unconstitutional and void as contrary to the Fourteenth Amendment, Subdivision 1 of the Constitution of the United States.

Tenth. The Court of Appeals of the State of New York erred in affirming the order of the Appellate Division ordering the writs of habeas corpus obtained by the plaintiffs-in-error be dismissed.

Wherefore, for these and other manifest errors appearing in the record, the plaintiffs-in-error pray that the order of the Court of Appeals entered in the Supreme Court of the State of New York be reversed, and that an order be entered sustaining the writs of habeas corpus and granting the plaintiffs-in-error their rights under the laws and Constitution of the United States.

THOMAS F. DOYLE,
WILLIAM G. CHAMBERS,
BLANCHE N. HAYS,
Plaintiffs-in-error,
By ARTHUR GARFIELD HAYS,
Their Attorney.

[Seal of Westchester County.]

Filed Mar. 8, 1922.
LOUIS N. ELLRODT,
Clerk.

59 [Endorsed:] Court of Appeals of the State of New York. The People of the State of New York, ex rel. Thomas F. Doyle, William G. Chambers and Blanche M. Hays, Plaintiffs-in-error, against George C. Atwell, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Defendants-in-error. Copy. Assignments of error filed Mar. 8, 1922. Louis N. Ellrodt, clerk. County of Westchester, State of New York. Arthur G. Hays, attorney for plaintiffs-in-error. Office & P. O. Address: 43 Exchange Place, Borough of Manhattan, City of New York.

60

4.

American Surety Company of New York.

Capital $5,000,000.

Company's Home Office Building 100 Broadway, New York.

Court of Appeals of the State of New York,

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. DOYLE, William G. Chambers, and Blanche M. Hays, Plaintiffs-in-error,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Defendants-in-error.

Whereas the Court of Appeals of the State of New York rendered a final judgment herein on the 22nd day of November, 1921 against the said Thomas F. Doyle, William G. Chambers and Blanche M. Hays, and

Whereas, the said Thomas F. Doyle, William G. Chambers and Blanche M. Hays have obtained or are about to obtain a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of New York and the judges thereof to the end that the record in said matter may be removed into the Supreme Court of the United States for the correction of and a reversal of the judgment so complained of and for the discharge of the said Thomas F. Doyle, William G. Chambers and Blanche M. Hays.

Now, therefore, The American Surety Company of New York having an office and principal place of business at #100 Broadway, Borough of Manhattan, City of New York, hereby undertakes in the sum of Five Hundred ($500.00) Dollars that the said Thomas F. Doyle, William G. Chambers and Blanche M. Hays will prosecute said Writ of Error to check and answer all damages and costs if they fail to make their plea good.

Dated, New York City, February 3, 1922.

AMERICAN SURETY COMPANY OF NEW YORK,
By MARSHALL L. BROWER,
Resident Vice-President.

Attest:
[L. S.] F. G. MERRILL,
Resident Assistant Secretary.

667,849 A.

Filed Mar. 8, 1922.
LOUIS N. ELLRODT,
Clerk.

61 *Authority of Signers for Surety.*

Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.

The first meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company, No. 100 Broadway, New York City, on Tuesday, January 18, 1921, at twelve o'clock noon.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees,

American Surety Company of New York.

"GENTLEMEN:

"The Committee appointed by the Executive Committee of this Company, at their meeting held Tuesday, November 30, 1920, for the purpose of nominating * * * Officers of the Company, * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for * * *

Place.	Resident vice presidents.	Resident assistant secretaries.
New York, N. Y.	Marshall L. Brower.	Marshall L. Brower.
	A. E. Cotterell.	A. E. Cotterell.
	William M. Tomlins, Jr.	C. S. Waterbury.
	Lester S. Moore.	Daniel Stewart.
	W. H. E. Reinecke.	W. H. E. Reinecke.
	C. S. Waterbury.	E. J. Sabater.
	Louis Papen.	Louis Papen.
	Samuel B. Brewster.	R. L. Neptune.
	C. E. St. John.	M. E. McGuire.
	Norvell H. Cobb.	Geo. W. Acritelli.
	R. P. Luckett.	Charles A. Stumpf.
	Clark Reynolds.	Lester S. Moore.
	R. L. Neptune.	Clark Reynolds.
	C. C. Whitney.	F. G. Merrill.
	Vernon H. Lee.	J. S. Lewis.
	Chas. M. Myers.	Samuel B. Brewster.
	M. L. Jenks.	C. E. St. John.
	James J. Lucy.	William J. Spalkhaver.
	F. G. Merrill.	Wm. C. Sievers.
	P. H. May.	R. P. Luckett.
	Geo. W. Acritelli.	Peter H. May.
		Norvell H. Cobb.
		G. E. Hick.
		James J. Lucy.
		Elmer H. Judson.
		H. Leithauser.
		Fred H. Ivers.

* * * * * * *

"Whereupon, it was

"Resolved, That the Secretary be authorized to cast one ballot on behalf of the Trustees present, for the members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, Officers and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

"The following resolution was adopted:

"Resolved, That the Resident Vice Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by a Resident Assistant Secretary."

* * * * * * *

STATE OF NEW YORK,
County of New York, ss:

I, W. H. E. Reinecke, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this Feb. 3, 1922.

[Seal of the American Surety Company, New York.]

W. H. E. REINECKE,
Assistant Secretary.

Filed Mar. 6, 1922.
LOUIS N. ELLRODT,
Clerk.

62 & 63 *Principal's Acknowledgment—If an Individual.*

STATE OF NEW YORK,
County of ——,
City of ——, *ss:*

On this — day of ——, 1921, before me personally appeared —— — to me known, and known to me to be the individual described

in and who executed the within instrument, and he duly acknowledged that he executed the same.

——— ———,
Notary Public —— County, Commissioner of Deeds.

Principal's Acknowledgment—If a Corporation.

STATE OF NEW YORK,
County of ——,
City of ——, ss:

On this — day of ——, 1921, before me personally came ——— to me known, who, being by me duly sworn, did depose and say: that he resides in ——; that he is the — of ——— the corporation described in and which executed the above instrument; that he knew the seal of said corporation: that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

——— ———,
Notary Public —— County, Commissioner of Deeds.

Principal's Acknowledgment—If a Firm or Co-partnership.

STATE OF NEW YORK,
County of ——,
City of ——, ss:

On this — day of ——, 1921, before me personally appeared ——, to me known and known to me to be one of the firm of — described in and who executed the foregoing instrument, and — he thereupon duly acknowledged to me that — he executed the same as the act and deed of said firm.

——— ———,
Notary Public —— County, Commissioner of Deeds.

Surety Company's Acknowledgment.

STATE OF NEW YORK,
County of New York,
City of New York, ss:

On this day of Feb. 3, 1922 *1921*, before me personally appeared Marshall L. Brower Resident Vice-President of the American Surety Company of New York, with whom I am personally acquainted, who being by me duly sworn, said: That he resides in the City of New York that he is the Resident Vice-President of the American Surety Company of New York, the corporation described in and which executed the within instrument: that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the Board of Trustees

of said Company; that he signed said instrument as Resident Vice-President of said Company by like authority, and that the liabilities of the American Surety Company of New York, do not exceed the assets as ascertained in the manner provided by law. And the said Resident Vice-President further said that he is acquainted with F. G. Merrill and knows him to be the Resident Assistant Secretary of said Company; that the signature of said Resident Assistant Secretary was thereto subscribed by like order of the said Board of Trustees, and in the presence of him the said Resident Vice-President.

[Seal of Harry P. Kriegsman, Notary Public, Bronx County.]

H. P. KRIEGSMAN,
Notary Public, —— County.

(Certificate filed in —— County.)

H. P. Kriegsman Notary Public, Bronx County, No. 41. Register's No. 20.
Certificate filed in New York County No. 89.
Register's No. 3096. King's County No. 11.
Register's No. 3061. Queens County No. 236.
Certificate filed in Richmond and Westchester Counties.
Term expires March 30, 1923.

Financial Statement of Surety or Justification.

Financial Statement of the American Surety Company of New York, General Offices No. 100 Broadway, New York, N. Y., as of December 31, 1920.

Resources.

Real Estate: Home Office Premises, unencumbered.	$4,500,000.00
New Building Construction	1,636,296.70
Securities at Market Value	5,162,106.90
Cash in Banks and Offices	1,197,599.81
Excise Reinsurance Fund	37,201.46
Premiums in Course of Collection	1,535,596.12
Accrued Interest and Rents	45,818.47
Accounts Receivable	64,613.70
	$14,179,233.16

Liabilities.

Capital Stock	$5,000,000.00
Surplus and Undivided Profits	1,136,894.94
Reserve for Unearned Premiums	4,910,980.01
Reserve for Outstanding Premiums	433,340.44
Reserve for Contingent Claims	2,112,118.07
Reserve for Expenses and Taxes	504,992.89
Reinsurance and Other Accounts payable	80,906.81
	$14,179,233.16

Special Deposits, required by insurance laws of various States, not considered.

STATE OF ——,
County of ——, *ss:*

I, —— ——, being duly sworn, say: That I am a Resident Assistant Secretary of the American Surety Company of New York; that said Company is a corporation duly created, existing and engaged in business as a Surety Company under and by virtue of the Laws of the State of New York, and has duly complied with all the requirements of the Laws of said State applicable to said Company and is duly qualified to act as surety under such Laws; that said Company has also duly complied with and is duly qualified to act as surety under the Act of Congress of August 13, 1894, entitled "An Act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon," as amended; that the foregoing is a true statement of the assets and liabilities of said Company as of the date mentioned; and that said American Surety Company of New York is worth more than $5,000,000 over and above all its debts and liabilities and exemptions allowed by law.

—— ——,
Resident Assistant Secretary.

Subscribed and sworn to before me this — day of ——, 1921.

—— ——,
Notary Public; Commissioner of Deeds.

64 [Endorsed:] Court of Appeals of the State of New York. The People of the State of New York, ex rel. Thomas F. Doyle, William G. Chambers and Blanche M. Hays, Plaintiffs-in-error, against George C. Atwell, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Defendants-in-error. Bond on Writ of Error. Arthur Garfield Hays, Attorney for plaintiffs in error, 43 Exchange Place, New York City. Filed Mar. 8, 1922. Louis N. Ellrodt, Clerk County of Westchester, State of New York. I approve of the within undertaking both as to form and sufficiency of the surety. Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York. American Surety Co., Surety.

65 Filed Mar. 8, 1922. Louis N. Ellrodt, Clerk.

5.

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York for the County of Westchester, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court, Westchester County, on a remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which decision could be had in the said proceeding by The People of the State of New York ex rel. Thomas F. Doyle, William G. Chambers and Blanche M. Hays vs. George C. Atwell, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, wherein was drawn in question the validity of an ordinance of the City of Mount Vernon (Chap. XXXI of Ordinances of the City of Mount Vernon, Sec. 21), passed pursuant to the charter of the City of Mount Vernon granted by the State of New York (Laws of 1892, Chap. 182, Sec. 166, subdiv. 5 as amended by Laws of 1896, Chap. 692) and of the said charter provision on the ground of their being repugnant to the laws and the constitution of the United States and the decision was in favor of their validity; a manifest error *had* happened to the great damage of the said petitioners, as is said and appears by the petition, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf do command you, if judgment be
66 & 67 therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, this 10th day of February, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk of the United States District Court,
Southern District of New York.

The foregoing writ is hereby allowed.

FRANK H. HISCOCK,
Chief Judge of the Court of Appeals of the State of New York.

Filed Mar. 8, 1922.

[Seal Westchester County.]

LOUIS N. ELLRODT,
Clerk.

68 [Endorsed:] M. 1—45. United States District Court Southern District of N. Y. People of the State of New York ex rel. Thomas F. Doyle, et al., Plaintiffs-in-error, vs. George C. Atwell, Acting Commissioner, etc. and People of the State of New York, Defendants-in-error. Writ of Error. Arthur Garfield Hays, Atty. for Pltffs.-in-error, 43 Exchange Place, New York City. Filed Mar. 8, 1922 Louis N. Ellrodt, Clerk County of Westchester, State of New York.

69 6.

UNITED STATES OF AMERICA, *ss:*

To George C. Atwell, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court in and for the County of Westchester, wherein the People of the State of New York ex rel. Thomas F. Doyle, William G. Chambers and Blanche M. Hays are plaintiffs in error and you are defendants in error, to show cause if any there be why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York, this 23 day of February, in the year of our Lord one thousand nine hundred and twenty-two.

FRANK H. HISCOCK,
Chief Judge of the Court of Appeals of the State of New York.

Filed Mar. 8, 1922.

[Seal Westchester County.]

LOUIS N. ELLRODT,
Clerk.

70 & 71 Supreme Court of the United States.

PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. DOYLE, William G. Chambers, and Blanche M. Hays, Plaintiffs-in-error,

vs.

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Defendants-in-error.

STATE OF NEW YORK,
County of New York, ss:

Charles Abrams, being duly sworn, deposes and says:

That at all times hereinafter mentioned he was over the age of eighteen (18) years; that on the 2nd day of March, 1922, at White Plains, N. Y.,—served a true and correct copy of the annexed citation upon Lee Parsons Davis, District Attorney of Westchester County, appearing for the People of the State of New York, one of the defendants herein, by delivering the same to Walter A. Ferris, First Assistant District Attorney, authorizied to accept service of same.

Deponent also served a true and correct copy of the said citation upon Clinton T. Taylor, Corporation Counsel of the City of Mount Vernon, by delivering same to a person in charge of the office of said Clinton T. Taylor at 3 Court Street, White Plains, N. Y., said person being of suitable age and discretion.

CHARLES ABRAMS.

Sworn to before me this 4th day of March, 1922.

BERTHA BLUM,
Notary Public, New York County

Filed Mar. 8, 1922.

[Seal Westchester County.]

LOUIS N. ELLRODT,
Clerk.

72 [Endorsed:] Court of Appeals of the State of New York. The People of the State of New York, ex Rel. Thomas F. Doyle, William G. Chambers and Blanche M. Hays, Plaintiffs-in-error, against George C. Atwell, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Defendants-in-error. Citation. Filed Mar. 8, 1922. Louis N. Ellrodt, Clerk County of Westchester, State of New York. Arthur Garfield Hays, Attorney for Plaintiffs-in-eror, Office & P. O. Address, 43 Exchange Place, Borough of Manhattan, City of New York.

73 In obedience to the commands of the within writ of error, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the

within entitled cause, wherein Peo. ex rel. Thomas F. Doyle, William G. Chambers and Blanche M. Hays are plaintiffs-in-error and George C. Atwell, Acting Chief of Police of the City of Mount Vernon and People of the State of New York are defendants-in-error, with all things concerning the same.

The foregoing papers numbered from one to seven inclusive constitute a full and complete transcript of the [papers record]* in the case on file in this office.

L. N. E.

Witness my hand and the seal of the Supreme Court of the State of New York, for the County of Westchester, this 15th day of March, 1922.

[Seal Westchester County.]

LOUIS N. ELLRODT,

Clerk of the Supreme Court, Westchester County.

Endorsed on cover: File No. 28,770. New York Supreme Court. Term No. 815. The People of the State of New York ex rel. Thomas F. Doyle et al., plaintiffs in error, vs. George C. Atwell, acting chief of police of the city of Mount Vernon, and People of the State of New York. Filed March 17th, 1922. File No. 28,770.

[*Word enclosed in brackets erased in copy.]

Supreme Court of the United States, October Term, 1922.

306.

PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. Do[illegible], William G. Chambers, and Blanche M. Hays, Plaintiffs in Error,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, and People of the State of New York, Defendants in Error.

It is hereby stipulated by and between the attorneys for the respective parties hereto that the opinions of the Judges of the Court of Appeals rendered on the 22nd day of November 1921 be made a part of the record and be included therein.

Dated October 9, 1922.

ARTHUR GARFIELD HAYS,
Attorneys for Plaintiffs in Error.
FREDERICK E. HICKS,
District Attorney of Westchester County,
Representing Defendants in Error.

[Endorsed:] Supreme Court of the United States. People of the State of New York ex Rel. Thomas F. Doyle, et al., Plaintiffs in Error, vs. George C. Atwell, etc., Defendants in Error. Stipulation. Arthur Garfield Hays, Attorney for Plaintiffs in Error, Office & P.O. Address, 43 Exchange Place, Borough of Manhattan, New York City.

STATE OF NEW YORK,
Court of Appeals,
State Reporter's Office, ss:

I, J. Newton Fiero, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of The People of the State of New York ex rel. Thomas F. Doyle, William G. Chambers and Blanche N. Hays, Appellants, v. George C. Atwell, Acting Chief of Police of the City of Mount Vernon, Respondent, decided by the Court of Appeals on the 22nd day of November, 1921, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every count thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 21st day of June, 1922.

J. NEWTON FIERO,
As Reporter of the Court of Appeals
of the State of New York.

Attest:

[Seal of the Court of Appeals, State of New York.]

[L. S.]

R. M. BARBER,
Clerk of the Court of Appeals.

STATE OF NEW YORK,
Court of Appeals:

I, Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that Richard M. Barber is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof and that J. Newton Fiero is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of The People of the State of New York ex rel. Thomas F. Doyle, William G. Chambers and Blanche N. Hays, Appellants, v. George C. Atwell, Acting Chief of Police of the City of Mount Vernon, Respondent, decided by the said Court of Appeals on the 22nd day of November, 1921, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of Richard M. Barber, as clerk of said court, appended thereto is the true and genuine signature of said Richard M. Barber, and the signature of J. Newton Fiero, as reporter of said court, appended thereto is the true and genuine signature of said J. Newton Fiero.

In witness whereof, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York, on the 22 day of June in the year one thousand nine hundred and twenty-two.

FRANK H. HISCOCK,
As Chief Judge of the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THOMAS F. Doyle, William G. Chambers, and Blanche N. Hays, Appellants,

v.

GEORGE C. ATWELL, Acting Chief of Police of the City of Mount Vernon, Respondent; People of the State of New York, Respondent.

(Decided November 22, 1921.)

Appeal from an Order of the Appellate Division, Second Department, Reversing an Order of the Special Term, Sustaining Writs of Habeas Corpus and Discharging the Relators.

The facts, so far as material, are stated in the opinion.

Arthur Garfield Hays for appellants.
Emory R. Buckner for respondents.

McLAUGHLIN, *J.*:

About eight o'clock in the evening of November 2, 1920, the relators were arrested by the police of the city of Mount Vernon while addressing a meeting in the public streets of that city without a permit from the mayor, in violation of an ordinance enacted by the municipal authorities. After their arrest, they were taken before a magistrate, and pending trial each obtained a writ of habeas corpus. upon the petitions and returns thereto, hearings were had, which resulted in one order sustaining the writs, discharging the relators and reciting that the ordinance under which the arrests were made was unconstitutional and void. An appeal was taken to the Appellate Division where the order was unanimously reversed and the writs dismissed. The relators appeal to this court.

The charter of the city of Mount Vernon (Laws of 1892, chap. 182, section 166, subd. 5, as amended by Laws of 1896, chap. 692) contains the following provision: "The Common Council * * * shall have full power * * * 5. To prohibit the gathering or assembling of persons upon the public streets of said city, or congregating upon the corners of the streets thereof * * *, and * * * 60. To make such general ordinances, by-laws and regulations not repugnant to the general laws of this state, as they shall deem expedient for the good government of the city."

In pursuance of the power thus given by the legislature to the common council of the city of Mount Vernon, the following ordinance was passed: "Section 21. The gathering or assembling of persons upon the public streets of the city, the holding of public meetings upon the public streets of the city, the congregating of persons in groups or crowds upon the public streets of the city, without special permit of the Mayor, to be granted in writing, under his hand and seal, is hereby prohibited. Any violation of the provisions of this section is declared to be a misdemeanor, punishable upon conviction by a fine of Twenty-five ($25) Dollars, or by imprisonment in the County Jail of Westchester County for twenty-five (25) days."

A violation of this ordinance by each of the relators is not denied. The sole question, therefore, to be determined upon this appeal is whether the ordinance be valid. The answer to the question turns upon whether the provisions in the charter were a proper exercise of legislative power, and if so, whether the common council had the legal right, under the charter, to pass the ordinance.

The legislature had the constitutional right to confer upon the common council of the city of Mount Vernon the power to enact ordinances regulating the use of public streets and the gathering or assembling of persons thereon. This power was expressly given. The ordinance passed clearly came within the provisions of the charter and had the force and effect, within the corporate limits of the city, of a statute passed by the legislature itself. (Village of Carthage v. Frederick, 122 N. Y. 268; Matter of Stubbe v. Adamson, 220 N. Y. 459.) The ordinance passed in pursuance of the power thus conferred is valid, since it is a reasonable exercise of the police power over the public streets. It is not repugnant to the state or federal Constitution, since it does not abridge the right of free speech or assemblage. Public streets are primarily for public travel. They are

dedicated to the public for that purpose. They are thoroughfares intended for the use of the public to enable persons to go from one place to another. All acts which tend to hinder public travel thereon may be forbidden and prohibited. Any obstruction on the streets, whether permanent or temporary, may be declared unlawful.

It is quite beside the question to assert that the acts forbidden may be lawful in themselves, and could not in a general way be prohibited. On the streets the exercise of such rights is subordinate to the public right of travel and may be regulated or prohibited. Public meetings and assemblages held on the streets tend to obstruct the streets and destroy in a measure the very purpose for which they have been dedicated. It is too well settled by judicial decisions in both the state and federal courts that a municipality may pass an ordinance making it unlawful to hold public meetings upon the public streets without a permit therefor to require discussion. The right to pass such ordinance is a valid exercise of legislative power, properly delegated to the municipal authorities. (Commonwealth v. Abraham, 156 Mass. 57; Commonwealth v. Davis, 162 Mass. 510; affd., 167 U. S. 43; Fitts v. City of Atlanta, 121 Ga. 567; Love v. Judge of Recorder's Court, 128 Mich. 545; People v. Pierce, 85 App. Div. 125.)

The contention of the appellants that the ordinance prohibiting public speaking in the public streets abridges liberty of speech, and is, therefore, unconstitutional, is not sustained either by reason or authority. The answer to the contention is that the ordinance merely concerns the use of public streets and is not directed against or concerned with free speech generally. The people have many constitutional rights, the exercise of which on the public streets may be prohibited. While there is a constitutional right of free speech, there is no constitutional privilege to exercise this right on the public streets in the form of there holding a public meeting. The fallacy of the appellants' contention was pointed out by Mr. Justice Holmes in Commonwealth v. Davis (supra). He said: "It assumes that the ordinance is directed against free speech generally, * * * whereas in fact it is directed toward the modes in which Boston Common may be used. * * * For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house. When no proprietary right interferes, the legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the lesser step of limiting the public use to certain purposes."

The right to address a meeting upon the public streets of the city of Mount Vernon was prohibited by the ordinance unless a permit therefor were obtained from the mayor. Each of the relators was attempting to address such a meeting without a permit from the mayor and against his refusal to grant one. The right to grant or withhold a permit carried with it the exercise of discretion in the discharge of a public duty. The mayor, in passing upon an application, had to take into consideration the public safety as well as the public convenience. This involved, among other things, the place where the proposed meeting was to be held, the congestion in the street at that point, and

the possible disturbance which the meeting might occasion. Obviously, the mayor had to exercise his discretion in a fair and impartial manner, with a view to the proper regulation of traffic and public necessities. If he did not exercise this discretion fairly, or if he acted arbitrarily or capriciously, then the relators might obtain relief by applying to the courts. (Matter of Ormsby v. Bell, 218 N. Y. 212; People ex rel. Nechamcus v. Warden, etc., 144 N. Y. 529; People ex rel. Empire City Trotting Club v. State Racing Comm., 190 N. Y. 31.) They could not obtain such relief by taking the law into their own hands, defying the mayor and violating the ordinance. The statement of the mayor, in refusing to grant the permit to one of the relators, that he would grant no further permits for Socialists' meeting while mayor, is, under all the facts set forth in the petitions and returns thereto, quite immaterial to the determination of the question presented. There is nothing in the ordinance, either upon its face or so far as appears from a proper enforcement of it, that it was to apply to a particular party or particular class of persons; on the contrary, the object sought to be obtained necessarily applied to all persons alike.

A writ of habeas corpus cannot take the place of perform the functions of an appeal from a judgment of conviction. The court before which a person is brought under such writ simply inquires whether the court rendering the judgment had jurisdiction to do so. If that fact appears, and the mandate under which the defendant is held be regular upon its face, the writ must be dismissed. (People ex rel. Hubert v. Kaiser, 206 N. Y. 46.) The magistrate before whom the relators were taken had jurisdiction to try them for a violation of the ordinance in question, and they are now legally in custody. The Appellate Division, therefore, properly held that the order of the Special Term was erroneous, reversed the same, dismissed the writs and remanded the relators.

In reaching this conclusion the authorities cited by the relators' counsel have not been overlooked. They are not in point, or are clearly distinguishable, with the exception of State of Connecticut v. Coleman (113 Atl. Rep. 385). That authority sustains his contention, but is not sustained by, or in harmony with, the decisions of the courts of this and other states, or the Supreme Court of the United States. (See cases cited, also City of Brooklyn v. Breslin, 57 N. Y. 591; People ex rel. Larrabee v. Mulholland, 82 N. Y. 324; People ex rel. Schwab v. Grant, 126 N. Y. 473; People ex rel. Lieberman v. Vandecarr, 175 N. Y. 440; Stern v. Metropolitan Life Ins. Co., 169 App. Div. 217; affd., 217 N. Y. 626.)

The order of the Appellate Division should, therefore, be affirmed.

CARDOZO, *J.* (concurring in result):

I concur in the result of Judges McLaughlin's opinion. The ordinance is not unconstitutional (Comm. v. Davis, 162 Mass. 510; Davis v. Mass., 167 U. S. 43). The wrong, if any, is in its administration (People ex rel. Nechamcus v. Warden, etc., 144 N. Y. 529, 539). The mayor refused a permit, it is said, because the applicants were Socialists. If that is so, he was guilty of a grave abuse of power. Remedies there are for a victim of such oppression, but upon the record

now before us habeas corpus is not one of them. The inquiry upon that writ is to be confined to the single point of jurisdiction. So confining it, we find that the relators have been arraigned before a magistrate, who, in committing them to custody, has acted on a sworn information sufficient on its face. The information charged the holding of a public meeting without the permit prescribed by law. Jurisdiction was thus conferred to arrest and hold for trial, even if the assumption be permissible that arbitrary refusal of the permit, a fact, if it be one, unknown to the magistrate, would be matter of defense (Biddinger v. Commissioner of Police, N. Y., 245 U. S. 128, 135). Habeas corpus tests the mandate under which prisoners are held. It is not a substitute for a trial to determine innocence or guilt (Glasgow v. Moyer, 225 U. S. 420; Horner v. U. S., 143 U. S. 570).

Nothing to the contrary was held in Yick Wo v. Hopkins (118 U. S. 356). There the vice in the ordinance was not "the consequence of adventitious circumstances" (People ex rel. Alpha Portland Cement Co. v. Knapp, 230 N. Y. 48, 58). Its prohibitions had been cunningly framed to reach a single class. Discrimination was its very purpose. No process that was valid could ever be issued under it. That is not the situation here. Inequalities, if they have here developed, are the result, not of the fulfilment, but of the perversion of the mandate of the ordinance.

My vote is for affirmance.

POUND, *J.* (dissenting):

The ordinance in question is not unconstitutional merely because it vests in the mayor the power to determine when he will grant or refuse a permit to speak in the public streets of Mt. Vernon. (Davis v Mass., 167 U. S. 43.) An alleged discrimination against street preachers of the Gospel was, however, in the leading case, negatived by the state court. (Com. v. Davis, 162 Mass. 510, 512.)

The question is whether the constitutionality of an ordinance may be determined by the manner in which it is enforced. On this point some expressions of this court appear to be in conflict with decisions of the Supreme Court of the United States.

It was said in Yick Wo v. Hopkins (118 U. S. 356, 373), holding void in habeas corpus proceedings an ordinance to regulate the carrying on of public laundries in San Francisco on the ground that its administration was directed against the Chinese: "The cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimina-

tions between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

The Yick Wo case was one of discrimination against the Chinese; the case before us is one of discrimination against Socialists. The California ordinance may have been conceived in iniquity, while the Mt. Vernon ordinance was enacted before it became customary to adopt repressive measures against the Socialists, but if the unconstitutional purpose is the test no distinction is made between the enactment and the enforcement of an ordinance which wears the outward garb of constitutionality. It is in neither case the proper use of arbitrary power. Again, in People ex rel. Lieberman v. Vandecarr (199 U. S. 552, 563), another habeas corpus case, the United States Supreme Court said: "There is nothing in the record to show that the action against him (relator) was arbitrary or oppressive and without a fair and reasonable exercise of that discretion which the law reposed in the board of health. We have, then, an ordinance which, as construed in the highest court of the State, authorizes the exercise of a legal discretion in the granting or withholding of permits to transact a business, which, unless controlled, may be highly dangerous to the health of the community, and no affirmative showing that the power has been exerted in so arbitrary and oppressive a manner as to deprive the appellant of his property or liberty without due process of law. In such cases it is the settled doctrine of this court that no Federal right is invaded, and no authority exists for declaring a law unconstitutional, duly passed by the legislative authority and approved by the highest court of the state."

Here a class—milk dealers—was properly regulated. No discrimination against relator—e. g., because he was a Democrat and the licensing authorities were Republicans—was indicated. The Yick Wo case was cited with approval as authority for the proposition: "There is no presumption that the power will be arbitrarily exercised, and when it is shown to be thus exercised against the individual, under sanction of state authority, this court has not hesitated to interfere for his protection, when the case has come before it in such manner as to authorize the interference of a Federal court." (p. 562.)

But this court has casually said in People ex rel. Nechamcus v. Warden, etc. (144 N. Y. 529, 539): "Nor is the constitutionality of an act to be determined by the manner in which its provisions may be carried out by those upon whom devolves the duty of acting as examiners (of applicants for plumbers' licenses). If they act unfairly or oppressively, as alleged by the relator in his petition, that is conduct which may call for a remedy against the persons who compose the board; but it does not furnish ground for assailing the validity of the statute."

The right of free speech and right of assembly are not absolute and under the ordinance the mayor had the power, and it was his duty, to withhold permits for street meetings when he thought that such meetings would interfere with travel or create disorder. The ordinance properly construed did not authorize discrimination and was valid. But the people are not to be lawfully deprived of their

free customs and privileges by the mere will of the magistrate. Street speaking is not forbidden to all, but only to those who have not received permission from the mayor. The presumption is that discretionary power will not be arbitrarily exercised but when it is so exercised the Supreme Court of the United States has not hesitated to hold that it will protect the individuals thus oppressed. (Yick Wo v. Hopkins, supra; People ex rel. Lieberman v. Vandecarr, supra.) "The Constitution is the supreme law; and statutes are written and enforced in obedience to its commands." (Municipal Gas Co. v. Public Service Comm., 225 N. Y. 89, 96.)

The mayor, when applied to by relators for a permit to hold a street meeting, as such meetings had previously been held in Mt. Vernon, announced that he would grant no further permits for Socialist meetings and would arrest any public speakers conducing such a meeting. The action was unauthorized, arbitrary and oppressive. The record does not suggest that the permit was refused for any other reason than that the political sentiments of relators were distasteful to the mayor.

I am strongly of the opinion that the doctrine of Yick Wo v. Hopkins and People ex rel. Lieberman v. Vandecarr controls and that the ordinance must be held to be unreasonable and void when it becomes an instrument of discrimination against relators to deprive them of their liberty without due process of law (U. S. Const. 14th Amend.; N. Y. Const. art. 1, § 6) and of their constitutional right of lawful assembly and freedom of speech. (N. Y. Const. art. 1, §§ 8, 9.) If such is the proper test, if the arrest was for a matter for which by law they were not punishable, habeas corpus was the relators' summary and effective remedy for arbitrary discrimination against them on account of their political principles and it was unnecessary for them to resort to mandamus or to other civil, criminal or political remedies in order to enforce their constitutional rights or to obtain redress. (Ex parte Seibold, 100 U. S. 371, 376; People ex rel. Moskowitz v. Jenkins, 202 N. Y. 53.)

It seems almost needless to suggest that a permit would not have protected relators against the consequences of any disorderly or otherwise illegal conduct indulged in or instigated by them, and that they were at all times answerable to the law for the abuse of the rights of free speech and public assembly which they endeavored to assert.

The order of the Appellate Division should be reversed and that of the Special Term discharging relators from custody affirmed.

Hiscock, Ch. J., Hogan, Crane and Andrews, JJ., concur with McLaughlin, J.; Cardozo, J., concurs in memorandum; Pound, J., reads dissenting opinion.

Order affirmed.

[Endorsed:] File No. 28,770. Supreme Court U. S., October Term, 1922. Term No. 306. People of the State of New York ex rel. Thomas F. Doyle et al., Pl'ffs in Error, vs. George C. Atwell, Acting Chief of Police, etc. Stipulation of counsel and addition to record. Filed Oct. 28, 1922.

Supre

PEOPLE
THOM
and B

GEORGI

THE P

IN ER

STAT

agistrate.
have no
that dis
n it is s
sitated t
Yick Wo
', supra.)
itten and
us Co. v.

d a street
Vernon,
list meet-
meeting
ne record
er reason
'ul to the

o v. Hop-
l that the
en it be-
o deprive
mst. 14th
l right of
. 1, §§ 8,
for which
relators'
n against
necessary
r political
to obtain
rel. Mos-

not have
r or other-
that they
rights of
o assert.
nd that of
l.
with Mc-
l. J., reads

., October
v York ex
C. Atwell.
ddition to

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 306.

PEOPLE OF THE STATE OF NEW YORK ex rel. THOMAS F. DOYLE, WILLIAM G. CHAMBERS and BLANCHE M. HAYS,

Plaintiffs-in-Error,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mt. Vernon,

and

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFFS-IN-ERROR.

ARTHUR GARFIELD HAYS.

Table of Contents.

Index of Authorities.

Cases Cited.

Other Citations.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 306.

PEOPLE OF THE STATE OF NEW YORK ex rel. THOMAS F. DOYLE, WILLIAM G. CHAMBERS and BLANCHE M. HAYS,
Plaintiffs-in-Error,

against

GEORGE C. ATWELL, Acting Chief of Police of the City of Mt. Vernon,

and

THE PEOPLE OF THE STATE OF NEW YORK.

Statement.

The petitioners were held on the ground that they had violated an ordinance of the City of Mount Vernon in that they held a meeting on a public street without a special permit from the Mayor. It appears that Thomas F. Doyle, a member of the Socialist Party and one of the relators, appeared before the Mayor of the City of Mount Vernon on the 22nd day of September, 1920, and requested a permit to hold a public meeting on September 25th; that the Mayor "replied * * * that he would grant no further per-

mits for Socialist meetings while he was Mayor, and that any public speaker talking under said auspices in the City of Mount Vernon would be arrested and * * * he would have no further discussion of the subject" (Record, 12).

It further appears that the Socialist Party had held meetings for years at the same place for which a permit was requested, without having occasioned any disorder, and that a blanket permit given for such purpose had for no apparent reason been revoked. It further appears (Record, 13) that permits had been given to other organizations to conduct public meetings and, further, that the Salvation Army was "permitted upon the public streets without requiring a permit" (Record, 25, 26).

Prior to the meeting in question, a meeting on the same corner across the way had been held by the Salvation Army; a band had been playing and people were singing (Record, 9, 10, 19, 25, 26).

Blanche M. Hays, one of the petitioners, is not a Socialist; the other two are. The extent of the speech of Blanche M. Hays consisted in stating, "I have come here to find out if Mount Vernon is a free city." The speeches of the others were of about the same purport and length. The speakers were arrested because they had no permit.

The Charter of the City of Mount Vernon.

The charter of the City of Mount Vernon (Laws of 1892, Chapter 182, as amended by laws of 1896, Chapter 692), contains the following provisions (Title VI, Section 166):

"The Common Council * * * shall have the control and management of the property, both real and personal, belonging to the corporation * * * and in addition to such other powers as may be herein conferred upon it, the said Common Council shall have full power * * *."

"5. To prohibit the gathering or assembling of persons upon the public streets of said city or congregating upon the corners of the streets thereof, and to authorize the police officers of said city to disperse all such gatherings or assemblages of persons, and upon the refusal of persons so congregated or assembled to disperse when commanded so to do by a duly appointed police officer, under regulations to be prescribed by the board of police commissioners, such police officer may make summary arrests * * *."

"60. To make such general ordinances, by-laws and regulations not repugnant to the general laws of this state, as they shall deem expedient for the good government of the city."

The Ordinance in Question.

The ordinance in question is as follows:

"An ordinance * * * entitled, 'In Relation to Nuisances and the Preservation of Good Order.'

"Section 21. The gathering or assembling of persons upon the public streets of the city, the holding of public meetings upon the public streets of the city, the congregating of persons in groups and crowds upon the public streets of the city, without special permit of the Mayor, to be granted in writing, under his hand and seal, is hereby prohibited.

"Any violation of the provisions of this section is declared to be a misdemeanor, pun-

ishable upon conviction by a fine of Twenty-five ($25) Dollars, or by imprisonment in the County Jail of Westchester County for twenty-five (25) days.

"Dated, Mount Vernon, N. Y., Sept. 29, 29, 1917."

Proceedings.

After the arrest of the petitioners, they were taken before a Magistrate and pending trial, each obtained a writ of habeas corpus. Upon the petitions and returns thereto, hearings were had which resulted in one order sustaining the writs, discharging the petitioners and reciting that the ordinance under which the arrests were made was unconstitutional and void. An appeal was taken to the Appellate Division which reversed this order, dismissed the writs and held the ordinance constitutional. The petitioners then appealed to the Court of Appeals which affirmed the judgment of the Appellate Division, one judge dissenting.

Assignments of Error.

FIRST. The Court of Appeals of the State of New York erred in holding that the provisions of Chapter XXXI of Ordinances of the City of Mt. Vernon, Section 21, amending Chapter XXXI of Ordinances of said City, passed pursuant to the Charter of the City of Mt. Vernon (Laws of 1892, Chap. 182, Section 166, sub-division 5, as amended by Laws of 1896, Chap. 692), and provisions of the said charter giving the Common Council of said City full power to prohibit the gathering or assembling of persons upon the

public streets of the City, are not in conflict with or in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States for that the State of New York by and through the provisions of said ordinance of the City of Mt. Vernon assumes and seeks (1) to deprive the plaintiffs-in-error and certain other citizens of the United States and of the State of New York of rights, privileges and immunities secured to other citizens of the United States and of the said State; (2) to deprive the plaintiffs-in-error and other citizens of the United States of liberty without due process of law; (3) to deprive and to deny to the plaintiffs-in-error and certain other citizens and persons within the jurisdiction of the State of New York the equal protection of the law.

SECOND. The Court of Appeals of the State of New York erred in holding that by the provisions of said ordinance of the City of Mt. Vernon leaving to the Mayor the sole and absolute power and discretion to issue permits to speak upon the public streets, and the provisions of the Charter granted to the City of Mt. Vernon by the State of New York, the plaintiffs-in-error were and are not deprived of rights, privileges and immunities secured to other citizens of the United States and of the State of New York by the Federal Constitution and laws of the United States.

THIRD. The Court of Appeals of the State of New York erred in holding that by the provisions of said Ordinance of the City of Mt. Vernon and by the provisions of the Charter granted the City of Mt. Vernon by the State of New York,

the plaintiffs-in-error were and are not deprived of liberty without due process of law.

FOURTH. The Court of Appeals of the State of New York erred in holding that the provisions of said ordinance of the City of Mt. Vernon and the provisions of the Charter of said City do not deny to the plaintiffs-in-error the equal protection of the law.

FIFTH. The Court of Appeals of the State of New York erred in holding that the said ordinance of the City of Mt. Vernon is within the police powers of the said City of Mt. Vernon or of the State of New York.

SIXTH. The Court of Appeals of the State of New York erred in holding the provisions of said charter giving the common council full power to prohibit the gathering or assembling of persons upon the public streets of said City or the holding of public meetings upon the public streets of the City without special permit of the Mayor to be within the police powers of the State of New York or the City of Mt. Vernon.

SEVENTH. The Court of Appeals of the State of New York erred in holding the provisions of said ordinance requiring plaintiffs-in-error to take out a permit not to be an abridgement of the unalienable and constitutional right of plaintiffs-in-error to speak freely or assemble without interference by the State or City.

EIGHTH. The Court of Appeals of the State of New York erred in holding that the provisions

of said ordinance and the provisions of the Charter granted the City of Mt. Vernon by the State of New York do not grant special and exclusive privileges to certain citizens which it denies to the plaintiffs-in-error and to other citizens of the United States.

NINTH. The Court of Appeals of the State of New York erred in holding the provisions of said ordinance leaving to the Mayor the sole and exclusive power and discretion to issue permits and the subsequent arbitrary refusal of the Mayor to grant permits to the plaintiffs-in-error do not deprive the plaintiffs-in-error of liberty without due process of law and do not deny to the plaintiffs-in-error the equal protection of the law and do not deprive the plaintiffs-in-error of rights, privileges and immunities secured to other citizens of the United States and of the State of New York and in not holding the said ordinance therefore unconstitutional and void as contrary to the Fourteenth Amendment, Subdivision 1 of the Constitution of the United States.

TENTH. The Court of Appeals of the State of New York erred in affirming the order of the Appellate Division ordering the writs of habeas corpus obtained by the plaintiffs-in-error be dismissed.

POINTS AND AUTHORITIES.

I.

A municipal ordinance properly adopted under a power granted by the State Legislature is to be regarded as an act of the State within the Fourteenth Amendment.

North American Storage Co. v. *Chicago*, 211 U. S. 306;
New Orleans Water Works v. *Louisiana Sugar Refining Co.*, 125 U. S. 18, 31.

II.

The ordinance in question is unconstitutional since it violates the First Section of the Fourteenth Amendment of the Constitution of the United States.

Constitution of the United States, Amendment XIV, Sec. 1;
Yick Wo v. *Hopkins*, 118 U. S. 356, 369;
Slaughter House Cases, 16 Wall. 36, 87;
United States v. *Cruikshank*, 92 U. S. 542;
People ex rel Lieberman v. *Van de Carr*, 81 App. Div. 128, Aff'd. 171 N. Y. 440 and 199 U. S. 552;

Davis v. *Mass.*, 167 U. S. 43;
Commonwealth v. *Davis*, 162 Mass., 510;
State of Connecticut v. *Coleman*, 113 Atl. Rep. 385;
Anderson v. *Wellington*, 40 Kan. 173;
Matter of Frazer, 63 Mich. 396;
Baltimore v. *Radke*, 49 Md. 217;
Chicago v. *Trotter*, 136 Ill. 430;
Rich v. *Naperville*, 42 Ill. App. 222;
State v. *Dearing*, 84 Mo. 585;
Cyc. on Municipal Corporations, 28 Cyc. 368 and 370;
Dillon on Municipal Corporations, p. 935.

In Conclusion.

POINT I.

A municipal ordinance properly adopted under a power granted by the State Legislature is to be regarded as an act of the State within the Fourteenth Amendment.

North American Storage Co. v. *Chicago*, 211 U. S. 306;
New Orleans Water Works v. *Louisiana Sugar Refining Co.*, 125 U. S. 18, 31.

POINT II.

The ordinance in question is unconstitutional since it violates the First Section of the Fourteenth Amendment of the Constitution of the United States.

Amendment XIV, Section 1 of the United States Constitution reads in part as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This ordinance provides that the gathering or assembling of persons, the holding of public meetings, or the congregating of persons in groups or crowds upon the public streets of the city is prohibited "without special permit of the Mayor."

There are no regulations pursuant to which the Mayor must grant a permit. The matter may be one of whim, caprice or arbitrary power which may be directed, as it was here, against certain individuals, to wit: Socialists.

It is contended (1) that the ordinance is void on its face as being within the prohibitions of the Fourteenth Amendment, (2) in the alternative it is void by reason of its administration, operating unequally, "so as to punish in the present petitioners what is permitted to others as lawful without any distinction of circumstances—and unjust and illegal discrimination * * * which,

though not made expressly by the ordinances is made possible by them." *Yick Wo* v. *Hopkins*, 118 U. S. 356, p. 369.

The relators do not deny the right of street regulation under the police power but it is contended that the police power does not operate beyond the necessities of the case. The protection of the public health or well-being, or the control of the streets does not require the ordinance to leave the determination to the will, whim or caprice of the Mayor of the town. If the object is merely to protect traffic it might provide that the Mayor designate the location, time or conditions. An unlimited grant of power is unnecessary where the object could be as well attained by limited grant. Further than that the police power need not go. If the ordinance restrains an individual beyond the point of what is necessary from the standpoint of public health and well-being, then it is contended that it becomes an unnecessary, invalid and unreasonable exercise of the police power. In *Slaughter House Cases*, 16 Wall. 36, page 87, the Court said:

> "Under the pretense of prescribing a police regulation, the state cannot be permitted to encroach upon any of the just rights of the citizen which the constitution intended to secure against abridgement."

The ordinance transcends the extent to which the application of police power is necessary in order to leave in the hands of one individual a determination as to whom he shall favor. It cannot be justified on the ground of the necessity of regulating the streets. There may be cases where a proper exercise of police power will

limit the rights of individuals but the police power should not be extended beyond what is necessary, and where the guaranteed rights of individuals can be protected and the police power exercised to accomplish all legitimate objects, then the limit of the police power would seem to have been reached.

The right of assemblage for lawful purposes has always been one of the attributes of citizenship and existed long before the adoption of the Constitution of the United States. A republican form of government "implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." (*United States* v. *Cruishank*, 92 U. S. 542.)

The determination of the question herein depends upon the interpretation and reconciliation of three cases:

> *Yick Wo* v. *Hopkins*, 118 U. S. 356;
> *Davis* v. *Massachusetts*, 167 U. S. 43;
> *People ex rel. Lieberman* v. *Van de Carr*, 199 U. S. 552.

The first of these cases was one of discrimination; in the other two no question of discrimination was involved. A discriminatory enforcement first throws light upon the real meaning of an ordinance, and secondly, voids the validity of an ordinance because discriminatory enforcement may deny to people the equal protection of the laws.

In *Yick Wo* v. *Hopkins*, 118 U. S. 356, the ordinance in question provided that it was unlawful for any person to carry on a laundry in San Francisco without first having obtained the

consent of the Board of Supervisors. The question arose on writs of habeas corpus. The ordinance was declared unconstitutional. The Court said (p. 366):

> "They seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, *but a naked and arbitrary power to give or withhold consent, not only as to places, but as to persons* * * *. *The power given to them is not confined to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledged neither guidance nor restraint.*
>
> * * * * * * *
>
> When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. * * * But the fundamental rights to life, liberty and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' *For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any*

country where freedom prevails, as being the essence of slavery itself.

* * * * * * *

When we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes necessary to suggest or to comment upon the injustice capable of being brought under cover of such a power, for that becomes apparent to everyone who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the *domain of law*, and we are constrained to pronounce it inoperative and void."

The above has to do with the ordinance as it appears on its face. The effect of the method of enforcement likewise arose and on that point the statement of the Court was as follows:

"This conclusion, and the reasoning on which it is based, are deductions from the face of the ordinance, as to its necessary tendency and ultimate actual operation. In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their ad-

ministration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this Court in *Henderson* v. *Mayor of New York*, 92 U. S. 259; *Chy Lung* v. *Freeman*, 92 U. S. 275; *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; and *Soon Hing* v. *Crowley*, 113 U. S. 703."

But it was contended that if discrimination was shown the relator was limited to redress "by the judicial process of mandamus, to require the supervisors to consider and act upon his case" (p. 366). But the Court said:

"* * * It would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint."

It is admitted that a permit was denied to Socialists and that the Mayor said that he would

grant no permits at any time to Socialists. In the same way the *Yick Wo* case was one of discrimination against a Chinese. As a commentary upon the attitude of the Mayor and as a clear indication of the fact that the permit was not refused because of traffic conditions, it appears that the Salvation Army just prior to this meeting held a meeting on the same corner, attracting a crowd with cymbals and with song.

A permit may be refused if the official does not think that the politics of the persons holding the meeting are advantageous to the public interests, as is the case here. If the official were honest, no politics other than his own would seem to him anything but detrimental to the public interests. The same is true as regards religious meetings or meetings for any purpose whatsoever. If, for instance, persons wished to hold a meeting to discuss this ordinance of the City of Mount Vernon and the action of the Mayor in arbitrarily refusing a permit, the Mayor himself could prevent the holding of such a meeting, if this ordinance was constitutional.

Were we not bound by legalistic interpretation, it would seem to be unnecessary to argue that there is no freedom of speech or assembly if the determination of whether or not one has these rights is subject to the will or caprice of another. Presumably, if a permit can be required for a meeting in the streets on the ground that traffic regulations make this a necessity, a permit could be required for a meeting in a hall or in a private house on the ground that fire regulations make that necessary. A city official refusing a permit in either case might insist that he had absolute discretion, subject to no regulation, and

that free speech or right of assembly had nothing whatever to do with the question.

The right of a citizen freely to speak on any subject, or the right of assembling is worth little if citizens must first have a permit. Just as soon as one must ask permission of anyone else, even the government, to make a speech or to assemble with others, constitutional right means nothing. Citizens may not assemble in the street without a permit, yet the right of assembly may not be abridged! Little by little the liberty of the citizen would be frittered away with his obligation to obtain a permit. If this ordinance is constitutional there is necessarily an end to any claim of freedom of speech or of assemblage.

But the defendants in error rely upon *Davis* v. *Massachusetts*, 167 U. S. 43, which involved an ordinance of this kind, although the provisions of the city charter were somewhat different. There was, however, nothing in that case to show any discrimination. In *Commonwealth* v. *Davis*, 162 Mass. 510, from which that appeal was taken, the Court had said that there was no reason to believe that the ordinance had any other than its ostensible purpose, to wit, a proper regulation of the public grounds, and the United States Supreme Court there said:

> "The record, however, contains no evidence showing the manner in which the ordinance in question had been previously enforced * * *."

There is a distinction in fact between public parks, the purposes of which may be decorative and the beauty of which might be destroyed were they used for general meetings, and the public

highways which from time immemorial have been used for public assemblage. And it must be borne in mind that the title of the City to the park was such that it could have done anything it pleased with the property—cut it into building lots or forbidden public admission. As the Court said:

> "The right to absolutely exclude all right to use, necessarily includes the authority to determine under what circumstances such use may be availed of * * *."

When, therefore, the court as a last resort of the State of Massachusetts decided that "no particular right was possessed by the plaintiff to the use of the common" there was no further ground for controversy. But, after all, the main distinction is that there was nothing in the record to show discriminatory enforcement.

Lieberman v. *Van de Carr*, 81 App. Div. 128, affirmed 171 N. Y. 440 and 199 U. S. 552, which is cited as authority for the proposition that a writ of mandamus is a proper remedy where an ordinance is improperly administered, was likewise a case in which no discrimination was involved. But, that the application of an ordinance may throw light upon its real meaning and intent is shown even in that case, where Mr. Justice Day said (p. 559:

> "Such regulations, however, should be uniform, and the board should not act arbitrarily; and if this section of the sanitary code vested in them arbitrary power to license one dealer, and refuse a license to another similarly situated, undoubtedly it would be invalid, (*Yick Wo* v. *Hopkins*, 118 U. S. 356; *Gundling* v. *Chicago*, 177 U. S. 183; *Noel* v. *People*, 187 Ill. 587; *Dunham* v. *Trustees of Rochester*, 5 Cow. 462; *City of Brooklyn* v.

Breslin, 57 N. Y. 591); but such was not its purpose, nor is that its fair construction."

* * * * * * *

"The section, properly construed, does not permit unjust discrimination, and, therefore, it is valid." (p. 562.)

"There is no presumption that the power will be arbitrarily exercised, and when it is shown to be thus exercised against the individual, under sanction of state authority, this Court has not hesitated to interfere for his protection, when the case has come before it in such manner as to authorize the interference of a Federal court (*Yick Wo* v. *Hopkins,* 118 U. S. 356)."

To summarize the three cases:

In *Davis* v. *Massachusetts* (*supra*) there was no evidence of any kind showing discrimination and the meaning of the ordinance was interpreted in the light of that fact. In *Lieberman* v. *Van de Carr* (*supra*) holding that mandamus was a proper remedy, the Court stated that the ordinance itself would have been unconstitutional if it vested power to license one and refuse another, i. e., if the regulations were not uniform—and here we have no regulations. *Yick Wo* v. *Hopkins* (*supra*) was a case of discrimination and the court held the ordinance unconstitutional.

It is not contended that the discrimination makes unconstitutional an ordinance which would otherwise be constiutional. It is contended, however, that the method of enforcement throws light upon the meaning of an ordinance and that this as well as other facts can be considered in determining what an ordinance actually means. And,

it is further contended that where an ordinance is enforced in a discriminatory manner the victims do not receive the equal protection of the laws. In other words, that the ordinance is void by reason of its administration operating unequally "* * * which, though not made expressly by the ordinances, is made possible by them." (*Yick Wo* v. *Hopkins*, 118 U. S. p. 369, *supra.*)

See, also,

State of Connecticut v *Coleman*, 113 Atl. Rep. 385;
Anderson v. *Wellington*, 40 Kan. 173;
Matter of Frazer, 63 Mich. 396;
Baltimore v. *Radke*, 49 Md. 217;
Chicago v. *Trotter*, 136 Ill. 430;
Rich v. *Naperville*, 42 Ill. App. 222;
State v. *Dearing*, 84 Mo. 585;
Cyc. on Municipal Corporations, 28 Cyc. 368;
Dillon on Municipal Corporations, p. 935.

IN CONCLUSION.

Writs of mandamus to enforce rights of speech or of assemblage are impracticable. The Constitution cannot mean that these absolute rights are subject to dilatory legal remedies, where the procedure itself would render any relief nugatory. It is a proceeding to be adopted where a public officer refuses to abide by regulations, but here there are no regulations at all; here there is no uniform rule of action; here the whole matter is one of will and caprice; here the refusal of a permit enables a public official to deny to those with whom he does not agree the presentation of the case for which they stand;

and where the action of the official shows that this is its real meaning, the ordinance itself is unconstitutional.

The Relators do *not contend, for a moment, that a municipality has not the right to regulate the streets of a city.* It is extremely unfortunate that where a permit is refused for the reason, which is undenied, that the Mayor opposed Socialist meetings, the public official should base his defense upon the right to regulate traffic. It is an absolute evasion of the question at issue and the attempt to use an ordinance pretended to have been passed for the regulation of traffic, for the purpose of preventing expression of certain political views, and then to evade the issue by pretense and hypocrisy, is no credit to the governing power. It is the very reason, as is shown hereafter, why ordinances are declared unconstitutional which put arbitrary power in the hands of individuals so as to subvert government by law to government by men.

An illustration of the form of city ordinance establishing proper regulations is shown by the ordinances in New York City, where, in reference to processions and parades, a permit must first be obtained from the police commissioner, "and the said police commissioner shall after due investigation * * * grant such permit subject to the following restrictions." Then follow the regulations as to the route and traffic conditions that must be observed.

This ordinance leaves official discretion wholly unregulated. The ordinance itself, irrespective of the method of its enforcement, nullifies the constitutional provision. The Constitution says that every citizen may freely speak. A citizen says:

"I want to find out if I have a right to speak." The citizen is arrested. No attempt to befog the issue by a suggestion that the municipality has a right to control public streets can give validity to an ordinance which gives the Mayor the right to prohibit the use of all public streets for a lawful purpose.

Municipalities in various parts of the country are passing ordinances of this character, in some cases in order to stop religious meetings; in others to prevent meetings of the American Federation of Labor; in other parts, to prevent meetings of those who are said to hold Socialist or radical views.

It is a new method of combatting so-called un-Americanism. Instead of the method of free men meeting error with truth, with the confidence that in the competition of ideas truth will prevail, the new method is that of prevention and repression. These ordinances give no guide as to the basis on which the so-called discretion is to be exercised. They often necessitate permits for meetings in halls, as well as on the streets. In the one case, the police power is pleaded on the ground that its exercise is necessary to avoid congestion in unsafe buildings. In the other case, the police power is pleaded on the ground that its exercise is necessary to prevent congestion of traffic. The ostensible purpose is never the real purpose, for other meetings are permitted under like conditions. Democrats can prevent meetings of Republicans, and Republicans of Democrats. Bills of Rights mean nothing.

Our institutions are founded on the theory that the people are to be trusted; that they will not be deluded by false theories; that free speech

provides a safety valve, and assures that a spirit of discontent, where it exists, will find means of expression other than through force and violence. Between the mob spirit exercised officially and the rights of the citizen, stand the courts as a bulwark of personal liberty. Constant evasion, discriminatory action, give the courts the opportunity to determine what is the true meaning of an ordinance. Free speech and the right of assemblage have never been limited to those who can afford to hire a hall.

Respectfully submitted,

ARTHUR GARFIELD HAYS,
Attorney for Plaintiffs-in-Error,
43 Exchange Place,
New York City, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

No. 306

THE PEOPLE OF THE STATE OF NEW YORK ex rel. THOMAS F. DOYLE, WILLIAM G. CHAMBERS and BLANCHE M. HAYS,

Plaintiffs-in-Error,

against

GEORGE G. ATWELL, Acting Chief of Police of the City of Mount Vernon,

and

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF ON BEHALF OF THE DEFENDANTS-IN-ERROR

FREDERICK E. WEEKS.

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases Cited.

Other Citations

POINTS AND AUTHORITIES

I

THE CITY OF MOUNT VERNON WAS EXPRESSLY AUTHORIZED BY THE LEGISLATURE TO ENACT THE ORDINANCE COMPLAINED OF.

Laws of New York for 1892, Chap. 182, Sect. 166, sub. div. 5—As amended by Laws of 1896, Chap. 692, (Charter City of Mount Vernon).

Ordinance, Chapter XXXI, Sect. 21, City of Mount Vernon.

Village of Carthage v. Frederick (1890) 122 N. Y. 268, 271.

Matter of Stubbe v. Adamson (1917) 220 N. Y. 459 463.

Peo. ex rel Knoblauch v. Warden, etc. (1915) 216 N. Y. 154, 162.

Dillon on Municipal Corporation (6th Ed.) Sec. 600.

II

THE ORDINANCE IN QUESTION DOES NOT VIOLATE THE FIRST SECTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Constitution of the United States, XIV Amendment, Section 1.

Constitution of the United States, First Amendment.

Davis v. Mass. (1897) 167 U. S. 43.
Commonwealth v. Davis (1895) 162 Mass. 510.
Commonwealth v. Abrams (1892) 156 Mass. 57.
Fitts v. City of Atlanta (1905) 121 Ga. 567.
Love v. Judge of Recorder's Court (1901) 128 Mich. 545.
City of Buffalo v. Fill (1920) 192 App. Div. 99 (N. Y.)
Peo. v. Pierce (1903) 85 App. Div. 125 (N. Y.)
Yick Wo. v. Hopkins, 118 U. S. 356.
Connecticut v. Coleman, 113 Atl. Rep. 385.
Peo. ex rel Lieberman v. Van de Carr, 81 A. D. (N. Y.) 128, affd. 171 N. Y. 440 and 199 U. S. 552.

III

THE ORDINANCE IS NOT UNCONSTITUTIONAL BECAUSE OF ONE ACT OF ALLEGED DISCRIMINATION.

Matter of Ormsby v. Bell, 218 N. Y. 212.
Peo. ex rel Nechamcus v. Warden, etc. 144 N. Y. 529.
Peo. ex rel Empire etc. v. State Racing Comm. 190 N. Y. 31.

IN CONCLUSION.

POINT I

THE CITY OF MOUNT VERNON WAS EXPRESSLY AUTHORIZED BY THE LEGISLATURE TO ENACT THE ORDINANCE COMPLAINED OF.

The Legislature of the State of New York in enacting the Charter of the City of Mount Vernon, vested the Common Council of that City with the following power:

> " . . . . . 5. To prohibit the gathering "or assembling of persons upon the public "streets of said City . . . or congregating "upon the corners of the streets thereof, . . . "and, 60. To make such general ordinances, by-"laws and regulations not repugnant to the gen-"eral laws of this state, as they shall deem ex-"pedient for the good government of the city."
>
> Laws of the State of New York for the year 1892, Chapter 182, Section 166, sub-division 5, as amended by Laws of 1896, Chapter 692.

In conformity to this provision of the Charter the Common Council enacted the ordinance in question, which is as follows:

> "An ordinance of the City of Mount Vernon, "N. Y., amending Chapter * * * 1 of the "ordinances of said City, entitled, 'In relation "'to nuisances and the preservation of good or-"'der by adding thereto a new section to be "'known as Section 21,' to read as follows:
>
> "Section 21. The gathering or assembling of "persons upon the public streets of the City,

"the congregation of persons in groups or "crowds upon the public streets of the City, with- "out special permit of the Mayor, to be granted "in writing, under his hand and seal, is hereby "prohibited.

"Any violation of the provisions of this section "is declared to be a misdemeanor, punishable "upon conviction by a fine of Twenty-five ($25) "Dollars, or by imprisonment in the County Jail "of Westchester County for twenty-five (25) "days."

The Legislature had the constitutional right to confer upon the Common Council of the City of Mount Vernon the power to enact ordinances regulating the use of public streets and the gathering or assembling of persons thereon, and in the charter this power was expressly given. The ordinance clearly coming within the provisions of the Charter, it had the force and effect so far as the City is concerned of a statute passed by the Legislature itself.

It will be noted that this ordinance closely follows the provisions of the Charter granting the power to enact the same.

This ordinance being expressly authorized by specific legislative authority, and not resting upon a legislative grant of general authority, its reasonableness or fairness may not be questioned unless the ordinance considered as a statute, clearly violates the Federal or State Constitution.

Village of Carthage v. Frederick (1890) 122 N. Y. 268.

Matter of Stubbe v. Adamson (1917) 220 N. Y. 459.

Peo. ex rel Knoblauch v. Warden, etc. (1915) 216 N. Y. 154, 162.

"An ordinance adopted by such a corpora-
"tion, pursuant to authority expressly delegated
"by the legislature, has the same force within
"the corporate limits, as a Statute passed by the
"legislature itself."

Village of Carthage v. Frederick, 122 N. Y. 268. 271.

"Where the legislature, in terms, confers upon
"a municipal corporation the power to pass
"ordinances of a specified and defined character,
"if the power thus delegated be not in conflict
"with the constitution, an ordinance passed pur-
"suant thereto cannot be impeached as invalid
"because it would have been regarded as un-
"reasonable if it had been passed under the in-
"cidental power of the corporation, or under a
'grant of power general in its nature.

"In other words, what the legislature distinctly
"says may be done, cannot be set aside by the
"courts because they may deem it to be unrea-
"sonable or against sound policy."

Dillon on Municipal Corporations, (6th Ed.) Sec. 600.

"The appellant asserts, that the section is,
"under the evidence, unreasonable. She has the
"right to take that position. It was not ex-
"pressly authorized by specific legislative au-
"thority, and its reasonableness and fairness
"may be questioned."

People ex rel. Knoblauch v. Warden, etc. 216 N. Y. 154, 162.

"Enforcement of a regulation having the force
"of an ordinary municipal ordinance passed
"under general authority may be opposed on

"the ground that the ordinance is unreasonable
"* * * * * * Whereas in the case of a statute
"it is equally well settled as a general proposi-
"tion that evidence may not be introduced for
"the purpose of showing that the Statute or
"ordinance is unreasonable, and therefore, un-
"constitutional."

Matter of Stubbe v Adamson (1917) 220 N. Y. at pg. 463.

POINT II

THE ORDINANCE IN QUESTION DOES NOT VIOLATE THE FIRST SECTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The XIV Amendment, Section 1 of the Constitution of the United States, in so far as it applies to the matter at issue, is as follows:

"* * * * No State shall make or enforce any
"law which shall abridge the privileges or im-
"munities of citizens of the United States; nor
"shall any State deprive any person of life, lib-
"erty or property, without due process of law,
"nor deny to any person within its jurisdiction
"the equal protection of the laws."

Plaintiffs-in-error contend that this ordinance is void on its face as being within the prohibition of Section 1 of the XIV Amendment, and that in the alternative it is void by reason of its administration, operating unequally "so as to punish in the present petitioners what is permitted to others, as lawful,

without any distinction of circumstances—an unjust an illegal discrimination * * * * which though not made expressly by the ordinances is made possible by them," citing *Yick Wo v. Hopkins*, 118 U. S. 356 p. 369 (Plaintiffs-in-error brief page 13).

This ordinance is a valid and reasonable exercise of the police power over the use of streets, and it does not abridge the right of free speech or assemblage as guaranteed by the First Amendment to the Constitution.

Public streets are not public speaking places, they are primarily for public travel, laid out for the use of people in going from one place to another. The portion of the street which is used as the sidewalk is for pedestrian travel and the highway for vehicles and for the crossing of pedestrians.

The Constitution does not guarantee to any person the right to use a public street for holding public meetings. No person has a vested right to address an assemblage on a public street. Public meetings in public streets tend to obstruct them because they interfere with the free use of the street by the traveling public.

While plaintiffs-in-error contend that the rights guaranteed them by the first section of the Fourteenth Amendment to the Constitution have been infringed, yet the whole question harks back to the First Amendment to the Constitution.

> "Congress shall make no law respecting an "establishment of religion, or prohibiting the "free exercise thereof; or abridging the freedom "of speech, or of the press; or the right of the "people peaceably to assemble and to petition "the government for a redress of grievances."

First Amendment to the Constitution.

It is well settled that a municipal ordinance making unlawful the holding of public meetings on streets is valid and constitutional.

Davis v. Massachusetts (1897) 167 U. S. 43.
Affirming Commonwealth v. Davis (1895) 162 Mass. 510.
Commonwealth v. Abrahams (1892) 156 Mass. 57.
Fitts v. City of Atlanta (1905) 121 Ga. 567.
Love v. Judge of Recorder's Court (1901) 128 Mich. 545.
City of Buffalo v. Till (1920) 192 App. Div. 99 (N. Y.)
People v. Pierce (1903) 85 A. D. 125 (N. Y.)

In the foregoing cases the ordinances before the Court were practically identical with the ordinance of the City of Mount Vernon. There can be no question but that the claim of the plaintiffs-in-error that the ordinances prohibiting public speaking in streets are unconstitutional because they abridge liberty of speech is unsound, for the answer to that argument is that the ordinance merely concerns the use of public streets, and is not directed against free speech generally. While there is a constitutional right of free speech, there is no constitutional privilege to exercise this right on the public street in the form of holding public meetings.

That the foregoing proposition is true is evidenced by *Commonwealth v. Davis* (Supra) where an ordinance of the City of Boston provided

> "No person shall, in or upon any of the public "grounds, make any public address, discharge

"any cannon or fire arm, expose for sale any "goods, wares or merchandise, erect or maintain "any booth, stand, tent or apparatus for pur- "poses of public amusement or show, except in "accordance with a permit from the mayor."

The defendant was charged by a complaint that he "did" make public "address" upon certain public grounds of Boston Common without a permit from the mayor of the city, and contrary to the ordinance above quoted.

The Supreme Judicial Court held

"It assumes that the ordinance is directed "against free speech generally * * * whereas "in fact it is directed toward the modes in which "Boston Common may be used. There is no evi- "dence before us to show that the power of the "legislature over the Common is less than its "power over any other park dedicated to the use "of the public, or over public streets the legal "title to which is in a city or town. * * * As rep- "resentative of the public, it may and does exer- "cise control over the use which the public may "make of such places, and it may, and does, "delegate more or less of such control to the city "or town immediately concerned. * * * * * "When no proprietary right interferes, the Legis- "lature may end the right of the public to enter "upon any public place by putting an end to the "dedication to public uses."

"It is settled also that the prohibition in such "an ordinance, which would be binding if abso- "lute, is not made invalid by the fact that it "may be removed in a particular case by a "license from a city officer, or a less numerous

"body than the one which enacts the prohibition,
"* * * * . It is argued that the ordinance
"really is directed especially against free preach-
"ing of the Gospel in public places, as certain
"Western ordinances seemingly general have
"been held to be directed against the Chinese.
"But we have no reason to believe, and do not
"believe, that this ordinance was passed for any
"other than its ostensible purpose, namely, as a
"proper regulation of the use of public grounds."

This case came to the Supreme Court of the United States on a Writ of Error, and the Court held, Mr. Justice White delivering the opinion that it is "conclusively determined there was no right in the plaintiff-in-error to use the Common except in such mode and subject to such regulations as the Legislature in its wisdom may have deemed proper to prescribe."

"The Fourteenth Amendment to the Constitu-
"tion of the United States does not destroy the
"power of the States to enact police reg-
"ulations as to the subjects within their control
" * * * * * and does not have the effect of
"creating a particular and personal right in the
"citizen to use public property in defiance of
"the Constitution and laws of the State."

"The assertion that although it be conceded
"that the power existed in the State or munici-
"pality to absolutely control the use of the Com-
"mon, the particular ordinance in question is
"nevertheless void because arbitrary and unrea-
"sonable in that it vests in the mayor the power
"to determine when he will grant a permit, in
"truth, whilst admitting on the one hand the
"power to control, on the other denies its ex-

"istence. The right to absolutely exclude all "right to use, necessarily includes the authority "to determine under what circumstances such use "may be availed of, as the greater power con- "tains the lesser."

Davis v. Massachusetts 167 U. S. 43.

In *Commonwealth v. Abrahams* (1892) 156 Mass. 57, a case where the defendant on July 4th, 1891, having been previously requested by an officer not to make an oration in Franklin Park in the City of Boston, did make a brief oration in a portion thereof, in which no considerable number of people were gathered, and no shrubbery or ornamental trees were growing, the subject being on the rights of citizens to assemble peaceably to consult concerning the public good, and to debate social questions. The oration was delivered in an ordinary oratorical tone, and was applauded by hand-clapping; and at the close the audience quietly dispersed, and no injury was done to the park. All this in violation of a rule of the Board of Park Commissioners forbidding orations, harangues or loud outcries in the parks, and further providing that a compliance with the regulations is a condition to the use of the premises. The defendant was convicted of a violation of these rules, and the Supreme Judicial Court held

"The parks of Boston are designed for the "use of the public generally, and whether any "park or a part of any park can be temporarily "set aside for the use of a portion of the public "is for the Park Commissioners to decide in "the exercise of their discretion."

Commonwealth v. Abrahams (1892) 156 Mass. 57.

An ordinance of the City of Atlanta, Ga., made unlawful the holding of any meetings on the streets without a permit of the mayor, and council, or of the mayor and the chairman of the Board of Police Commissioners. One Fitts, a lecturer on socialism, had made several speeches on the street with a permit, but the permit had been withdrawn. Thereafter Fitts announced that he would speak without a permit, in order to vindicate free speech. He was arrested while speaking, and convicted of violating the ordinance. The Supreme Court of Georgia in *Fitts v. City of Atlanta* (1905) 121 Ga. 567, upheld the conviction.

> "The primary object of streets is for public "passage. They should be kept open and unob- "structed for that purpose. If damage accrues "to passers by reason of improperly allowing "them to be used for other purposes, the city may "become liable. The streets of the city are pe- "culiarly within the police control for the pur- "pose of preserving and protecting their use by "the public as thoroughfares. A man has many "constitutional and legal rights which he can "not lawfully exercise in the streets of a city. "Thus, every citizen has a right to lawfully ac- "quire and hold personal property; but he has "no right, constitutional or otherwise, to insist "on storing his possessions in the street. Every "man has the inalienable right to sleep and eat "(if he has the edibles), but he has no constitu- "tional right to make his bed or set his table in "the street. Every man has not only the right to, "but he should, bathe and cleanse himself, and "change his raiment, if he has a change. This is "a duty imposed by his individual constitution, "if not by that of his country. But there is no

"constitutional right on his part to perform his "ablutions or exercise the most necessary de- "mands of his nature in the public streets. At "proper times and in proper places, one may "make loud noises, or shoot a gun, or test his "lung power vocally to a considerable extent, "without offending against any law; but there is "no right, inherent or constitutional, to make "vociferous outcries or practice gunnery in the "street. If Prof. Fitts's idea of constitutional "law were correct, I see no reason why every "citizen should not claim a right to use the public "streets for the exercise of his trade, calling or "profession, which may be much more essential "to his welfare, and that of the public, than "speech-making by the plaintiff in certiorari, "however eloquent, and regardless of the sound- "ness or unsoundness of his argument. If the "constitution, State or Federal, guarantees to "Prof. Fitts the right to make public speeches "on the streets of Atlanta, why does it not also "guarantee the same right to every lecturer who "may not desire to hire a hall, and to every show- "man who wishes to exhibit on the highway, or "to every mechanic, artisan, or merchant, or "other citizen the right to ply his lawful voca- "tion in the public thoroughfare? The consti- "tutional right to exercise one's lawful vocation is "quite as sacred and often more important than "the right to make speeches, but the exercise of "either right must yield to the municipal power "properly exercised over the streets for the prim- "ary objects for which they were established. "If every one who has some constiutional right "has also the constitutional right to exercise it "in the streets of a city, regardless of municipal "regulations, these thoroughfares may soon be-

"come a gathering place of a numerous clan
"rivaling those adjuncts of modern exhibition
"which, since the term was used during the Col-
"umbian Exposition at Chicago in 1893, have
"come to be distinguished by the name of Mid-
"way Plaisance."

Another direct authority is *Love v. Judge of Recorder's Court* (1901), 128 Mich., 545. The city council of Detroit passed an ordinance that no person should, upon the streets, parks and public places within a half-mile circle of the city hall, make a public address without a permit from the mayor. One Allen, violated the ordinance by making a speech in the public common. A complaint was presented to the recorder, but the recorder discharged the accused on the ground that the ordinance was unconstitutional. On appeal judgment was reversed, the Michigan Supreme Court holding the ordinance valid.

"The question in this case is, who may occupy
"the public spaces in the city—some individ-
"ual who happens to get there first, or shall all
"the citizens of Detroit have equal rights there?
"and what shall be the manner of the occupancy?
"It is evident that no considerable portion of
"the citizens of a great city like Detroit could
"occupy this limited space at one time; nor
"could all of the preachers, teachers, and pub-
"lic speakers in that city who might think they
"had a message to deliver to the people, with
"the audiences they would naturally draw, find
"room, at one time, in this public space, with-
"out rendering it useless as a place across
"which the public might travel. Under such
"circumstances, what can be more reasonable

"than to lodge the power of deciding when and "where one may occupy this public space, in "one having sufficient intelligence and so "possessing the confidence of his fellow citi- "zens that they have placed him at the head "of the municipal government. * * *

"It is said that the ordinance is directed "against freedom of speech; but this is a mis- "take. It is simply directed to the method of "using public space, and is no more a curtail- "ment of the right of free speech than "would be an ordinance that prohibited the mak- "ing of public addresses in the corridors of the "city hall" (pages 548-549).

The authority relied upon by Plaintiffs-in-error in support of their claim that the ordinance is unconstitutional because enforced in a discriminatory manner against the persons violating it, is *Yick Wo v. Hopkins* (1886) 118 U. S., 356. This case involved persecution of the Chinese.

The ordinance prohibited laundries within the City and County of San Francisco without the consent of the Board of Supervisors, unless in a building constructed either of brick or stone. It was admitted "there were about 320 laundries in the City and County of San Francisco, of which about 240 were owned and conducted by subjects of China, and of the whole number, viz., 320, about 310 were constructed of wood, the same material that constitutes nine-tenths of the houses in the City of San Francisco. The capital thus invested by the subjects of China was not less than two hundred thousand dollars, and they paid annually for rent, license, tax, gas and water about one hundred and eighty thousand dollars."

One hundred and fifty Chinamen had been arrested for carrying on business without the consent, while the proprietors of eighty odd laundries who were not Chinamen and were doing business under similar conditions were not molested. Two hundred Chinamen had been denied the consent by the Board of Supervisors and consents had been granted to all who were not Chinese, with one exception.

The facts of this discrimination was admitted and no reason for it was shown and only one conclusion could be drawn, that the ordinance was passed solely to exclude the Chinese from engaging in the laundry business.

The only authority sustaining the contention of plaintiffs-in-error is *State of Connecticut v. Coleman*, 113 Atl. Rep., 385, but this case is not sustained by, or in harmony with the decisions of the United States Supreme Court, or the Courts of the States.

This case held that an ordinance prohibiting public speaking on the streets without a permit was unconstitutional, on the ground that the public officer was given unlimited power to grant or withhold permits, and that such a power was opposed to the public policy of Connecticut. The Court expressly conceded that the law of New York, and the decision of the Supreme Court of the United States as laid down in *People ex rel Lieberman v. Van de Carr*, 175 N. Y., 440, and 199 U. S., 552, was to the contrary, for the reason that in New York such an ordinance was held not to give unlimited power to the officer.

POINT III

THE ORDINANCE IS NOT UNCONSTITUTIONAL BECAUSE OF ONE ACT OF ALLEGED DISCRIMINATION.

The legislature expressly authorized the City of Mount Vernon to pass this ordinance; it is a proper exercise of the police power of the State over public streets and does not run counter to any provision of the Constitution of the State of New York or of the Constitution of the United States.

The plaintiffs-in-error, urge not only that the ordinance is unconstitutional in its terms, but also that it is unconstitutional because enforced by the Mayor in an arbitrary and unreasonable manner by discriminating against the Socialists. According to the plaintiff-in-error Doyle, the Mayor said he would grant no further permits for Socialistic meetings and any public speaker talking under Socialistic auspices would be arrested (Record, p. 8). That prior to this refusal to issue a permit, the Mayor asked Doyle who had been the speaker at a meeting held by said party two weeks previously and Doyle replied Samuel Orr, who was duly elected a member of the Assembly of the State of New York at a recent special election held on September 10th, 1920. That this meeting was held by virtue of a special permit issued by the Mayor (Record, p. 9).

This isolated instance is the only act of discrimination claimed, and for this one act, this Court is asked to declare an ordinance which is a valid exercise of police power, unconstitutional.

The plaintiffs-in-error admit that a municipality has the right to regulate the streets of a city (Plaintiffs-in-error's brief, page 21).

The printed record (page 12) shows that for years the Socialistic party had held public meetings in the streets of Mount Vernon, and that they had a blanket permit, this shows there was no studied discrimination against the Socialists. The Salvation Army held a meeting on the opposite corner of the street, and to permit another meeting directly opposite at the most dangerous corner in the thickly congested position of the City (Record p. 20) would deprive pedestrians and the traveling public of their paramount rights in the street.

The Mayor in passing upon an application, had to take into consideration the public safety as well as public convenience. He had to consider the place where the proposed meeting was to be held, the congestion of the street at that point, and the possible disturbance the meeting might occasion.

If the Mayor did not exercise his discretion fairly, or if he acted arbitrarily relief could have been obtained by applying to the Courts.

Matter of Ormsby v. Bell 218 N. Y. 212.
Peo. ex rel Nechamcus v. Warden, etc. 144 N. Y. 529.
Peo. ex rel Empire etc. v. State Racing Comn. 190 N. Y. 31.

The proper method of obtaining relief was not by taking the law into their own hands, defying the mayor and violating the ordinance, mandamus was their remedy, if that was not so they could in defiance of all law hold their meetings in any street at any

time, blocking free passage over the streets and could only be held to account for the abuse of free speech.

IN CONCLUSION

No rights of property have been infringed, no one has been prevented from pursuing his lawful trade or calling and earning his livelihood—but three persons are calling upon the Courts in the endeavor, while claiming they have been discriminated against, to obtain for themselves the privilege to use the public highways in a manner no others are permitted to use them, that is without the special permit.

They assume they were unjustly denied a permit to use the public highway for a purpose which public highways, are not generally dedicated—then instead of taking their grievances to the Court for redress, they defy the law and ask the law to uphold them in their lawlessness.

The law of the land means nothing to them, except when they can invoke it to sustain them in their flagrant violations of it when it does not suit them to obey it.

Respectfully submitted,

FREDERICK E. WEEKS,

Attorney for Defendants-in-Error,

185 Main Street,
White Plains, N. Y.

PEOPLE OF THE STATE OF NEW YORK EX REL. DOYLE ET AL. *v.* ATWELL, ACTING CHIEF OF POLICE OF THE CITY OF MOUNT VERNON, ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 306. Submitted March 12, 1923.—Decided April 9, 1923.

This Court is without jurisdiction to review a judgment of a state court based not only upon a ground involving a federal question, but also upon an independent ground of state procedure involving no federal question and broad enough to sustain the judgment. P. 592.

Writ of error to review 197 App. Div. 225; 232 N. Y. 96, dismissed.

ERROR to a judgment of the Supreme Court of New York, entered on mandate from the Court of Appeals, dismissing petitions for *habeas corpus*.

Mr. Arthur Garfield Hays for plaintiffs in error.

Mr. Frederick E. Weeks for defendants in error.

MR. JUSTICE SANFORD delivered the opinion of the Court.

The record presents a preliminary question as to our jurisdiction under the writ of error.

The relators were arrested by the police of the City of Mt. Vernon, N. Y., while holding a street meeting, on the charge of violating an ordinance which prohibited, under

penalty of fine, the gathering or assembling of persons or the holding of public meetings upon the public streets of the city, without special permit of the mayor. Before trial the relators obtained writs of habeas corpus from the Supreme Court of the State, at Special Term; which, being heard together, resulted in an order sustaining the writs and discharging the relators. The Appellate Division of the Supreme Court, on appeal, reversed this order and dismissed the writs [197 App. Div. 225]; and the Court of Appeals of the State, on a further appeal, affirmed the order of the Appellate Division [232 N. Y. 96,] and remitted the record and proceedings to the Supreme Court to be proceeded upon according to law. Thereafter this writ of error was granted by the Chief Judge of the Court of Appeals to review the judgment of that court.

It is urged, in substance, that the Court of Appeals denied the contention of the relators that the ordinance, both by its provisions and through the alleged discriminatory manner in which it was enforced, deprived them of their rights of freedom of speech and assembly in violation of the Fourteenth Amendment. The Court of Appeals, however, held not only that the ordinance was a valid and constitutional exercise of the police power, but also that the writ of habeas corpus was not, under the state practice, the proper method of contesting its validity. In the opinion of that court, after passing upon the constitutional question, it was said: "A writ of habeas corpus cannot take the place of (or) perform the functions of an appeal from a judgment of conviction. The court before which a person is brought under such writ simply inquires whether the court rendering the judgment had jurisdiction to do so. If that fact appears, and the mandate under which the defendant is held be regular upon its face, the writ must be dismissed. (*People ex rel. Hubert* v. *Kaiser,* 206 N. Y. 46.) The magistrate before

whom the relators were taken had jurisdiction to try them for a violation of the ordinance in question, and they are now legally in custody. The Appellate Division, therefore, properly held that the order of the Special Term was erroneous, reversed the same, dismissed the writs and remanded the relators."

It is settled law, that where the record discloses that the judgment of a state court was based, not alone upon a ground involving a federal question, but also upon another and independent ground, broad enough to maintain the judgment, this Court will not take jurisdiction to review such judgment and will dismiss a writ of error brought for that purpose. *Eustis* v. *Bolles*, 150 U. S. 361, 366; *Dibble* v. *Bellingham Bay Land Co.*, 163 U. S. 63, 69; *Allen* v. *Arguimbau*, 198 U. S. 149, 155; *Adams* v. *Russell*, 229 U. S. 353, 358; *Cuyahoga River Power Co.* v. *Northern Realty Co.*, 244 U. S. 300, 304.

Hence, as the decision of the Court of Appeals as to the effect of the writs of habeas corpus was broad enough to maintain the judgment, independently of its decision as to the constitutional question, the writ of error is

Dismissed.